160 U.S. 357

160–357

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~712~~. ~~376~~ 95

EDWARD B. BARTLETT, ALBERT C. WOODRUFF, AND HENRY E. NITCHIE, PLAINTIFFS IN ERROR,

vs.

WILLIAM LOCKWOOD AND EMORY W. McCLINTOCK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED MARCH 18, 1892.

(14,993.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 712.

EDWARD B. BARTLETT, ALBERT C. WOODRUFF, AND HENRY E. NITCHIE, PLAINTIFFS IN ERROR,

vs.

WILLIAM LOCKWOOD AND EMORY W. McCLINTOCK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Return to writ of error	*a*	1
Writ of error	*b*	1
Affidavit of service of writ of error, citation, bond, and assignment of errors	*e*	2
Citation	*f*	2
Copy of citation	*h*	3
Copy of writ of error	*i*	3
Bond	*k*	4
Remittitur from court of appeals	*o*	6
Case on appeal	*r*	7
Statement	1	8
Opening for plaintiffs	2	8
Motion to dismiss by defendants	7	11
Motion to dismiss denied	10	13
Evidence for plaintiffs	10	13
Testimony of Emory W. McClintock	10	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 31, 1894.

	Original.	Print.
Evidence for defendants	43	36
Testimony of John V. Van Arsdale	43	36
Evidence for plaintiffs	47	38
Testimony of Joseph H. Raymond	47	38
Emory W. McClintock	78	58
Charles L. Hamilton	89	66
Thomas Bottomley	93	69
William Lockwood	96	72
Emory W. McClintock (recalled)	101	75
Augustine Smith	104	77
Albert A. Meyer	108	80
Plaintiffs rest	121	89
Motion for nonsuit	121	89
Argument of motion	121	89
Ruling on motion	155	110
Evidence for defendants	157	111
Testimony of Theodosius Barto, Jr.	157	111
Edward B. Bartlett	159	112
William M. Smith	226	161
R. Morimura	340	245
William M. Smith (recalled)	342	247
Alfred L. Carroll	350	252
Martin L. Berry	356	257
Franklin D. Loomis	359	259
Thomas Sheil	367	264
Charles F. Kane	369	266
Franklin D. Loomis (recalled)	377	272
Augustine Zaubitz	379	274
Franklin D. Loomis (recalled)	385	278
Defendants rest	389	281
Evidence for plaintiffs in rebuttal	389	281
Testimony of Augustine Smith	389	281
Herman Garbe	389	281
Emory W. McClintock	392	283
Frank M. Smith	397	287
Augustine Smith (recalled)	408	296
Emory W. McClintock (recalled)	409	296
S. Weber Parker	411	298
Emory W. McClintock (recalled)	434	315
Motions to dismiss and for nonsuit	437	318
Ruling on motions	439	318
Charge to jury	440	319
Defendants' exceptions to charge	448	324
Defendants' requests to charge	450	325
Deposition of Charles S. Fairchild	470	337
Plaintiffs' exhibits	483	345
Exhibit A—Pass from deputy health officer, May 30, 1885	483	345
B—Certificate of health officer, June 10, 1885	483	345
C—Declaration of exporter, February 11, 1885	484	345
D—Declaration of exporter, Feb. 10 and 11, 1885	485	346
E—Quarantine regulations, August 9, 1884	487	348
F—Circular of Treasury Department, Aug. 30, 1884	489	349
G—Permit of sanitary superintendent, June 1, 1885	490	349

	Original.	Print.
Exhibit H—Permit of surveyor, June 27, 1885	491	350
I—Order of health officer and commissioner of health, June 17, 1885	492	351
K—(Not set out)	492	351
L—Letter of health officer to collector, June 6, 1885	492	351
La—Circular of Treasury Department, June 10, 1885	498	354
M—Letter of collector to health officer, June 6, 1885	499	355
O—(Not set out)	499	355
P—Circular of commissioner of health, March 19, 1885	500	355
Q—Form 19 B—health office	500	356
K—Receipt of E. B. Bartlett & Co., Oct. 9, 1885	501	356
R—Receipt of E. B. Bartlett & Co. July 3, 1885	501	357
S—Telegram from Treasury Department to collector, June 5, 1885	502	357
V—License to E. B. Bartlett & Co., August 1, 1885	502	357
X—Letter from Treasury Department to health officer, December 18, 1884	507	360
Z—Certificate of organization of New York Disinfecting Co. (not set out in full)	508	361
A A—Receipt for stock, November 25, 1884	508	361
B B—(Not set out)	508	361
C C—(Not set out)	508	361
D D—(Not set out)	508	361
Defendants' exhibits	509	361
Exhibit 1—Affidavit of Wm. H. Gould	509	361
2—Order of deputy collector, June 9, 1885	509	362
3—Letter of Lockwood and McClintock to health officer, June 26, 1885	510	362
4—Letter of Lockwood and McClintock to health officer, July 1, 1885	510	362
5—Affidavit of W. Scott Smith	511	362
6—Letter from Treasury Department to health officer, November 24, 1885	512	363
6a—Circular from State Department to consular officer, July 17, 1885	513	364
7—Letter from Treasury Department to collector, March 17, 1885	515	364
Letter from Paper Stock Disinfecting Co. to Secretary of Treasury, March 5, 1885	516	366
8—Order of deputy collector, June 3, 1885	517*a*	367
9—Receipt of storekeeper	517	367
10, 11, and 12—(Not set out)	517	367
13—(Not set out)	517	367
15—Order of commissioner of health, June 15, 1885	518	367
16—Letter of J. H. Raymond, commissioner, June 17, 1885	518	367
17—Circular for Treasury Department, Dec., 1884	519	368
18—Complaint in case of Lockwood *et al.* *vs.* Robertson *et al.*	521	369
Affidavit of Wm. Lockwood	523	370

	Original.	Print.
Exhibit 18—Affidavit of C. Braker, Jr.	525	371
19—Affidavit of E. B. Bartlett	526	371
Affidavit of Sam'l Weber Parker	527	372
20—Opinion in Lockwood *vs.* Paper Stock Disinfecting Co.	528	373
21—Letter of collector to Secretary of Treasury, April 14, 1885	529	373
22—Letter from Treasury Department to collector, June 11, 1885	530	374
23—Letter from Treasury Department to collector, June 12, 1885	531	374
24—Letter from collector to Secretary of Treasury, June 16, 1885	532	375
25—Letter from Treasury Department to collector, June 17, 1885	532	375
26—Letter from collector to Secretary of Treasury, June 19, 1885	533	376
27*a*—Report of committee to Treasury Department, December 11, 1884	534	376
27*b*—Letter of committee to Secretary of Treasury, December 12, 1884	535	377
28—(Not set out)	535	377
29—Report of conference at the Fifth Avenue hotel, April 23, 1885	535	377
30—Agreement between Paper Stock Disinfecting Co. and Bartlett & Co., February 18, 1885	537	378
31—Letter of collector to Bartlett & Co., July 18, 1885	539	379
32—Bill of New York Disinfecting Co.	540	380
33—Bill of New York Disinfecting Co.	540	380
34—(Not set out)	540	380
35—Letter of Geo. M. Sternberg to health officer, February 9, 1887	541	381
35—Order of collector, January 14, 1885	541	381
36—Letter of collector to health officer, June 13, 1885	542	381
Letter, Treasury Department to collector, June 11, 1885	543	382
37—Letter of collector to health officer, June 13, 1885	543	382
38—Letter of Secretary of Treasury to health officer, June 6, 1885	544	382
39—Letter of health officer to the collector, March, 13, 1885	545	383
40—Letter from Treasury Department to collector, June 11, 1885	546	383
41—Certificate of Paper Stock Disinfecting Co.	546	384
42 to 47—(Not set out)	546	384
48—Certificate of inspector of rags	547	384
49 to 56—(Not set out)	547	384
57—Letter of Lockwood and McClintock to S. Weber Parker, February 2, 1885	547	384

	Original.	Print.
Exhibit 58—Letter of Paper Stock Disinfecting Co. to Bartlett & Co., July 27, 1885	548	385
59—Letter of collector to Paper Stock Disinfecting Co., June 1, 1885	548	385
60—(Not set out)	549	385
61—Circular of Treasury Department, Nov. 15, 1884	549	386
Fairchild 1—Telegram of Fairchild to collector, April 14, 1885	550	386
2—(Not set out)	550	386
3—Telegram of Fairchild to collector, April 15, 1885	551	387
4—(Not set out)	551	387
5—Letter of collector to Secretary of Treasury, June 8, 1885	551	387
6—Circular from Treasury Department, June 10, 1885	552	387
7, 8, and 9—(Not set out)	552	387
10—Letter, collector to United States attorney, June 6, 1885	553	388
11 and 12—(Not set out)	553	388
13—Letter of health officer and others to Secretary of Treasury, June 24, 1885	554	388
14—Letter of health officer to Secretary of Treasury, June 26, 1885	555	389
15—Letter of Secretary of Treasury to health officer and others, June 30, 1885	556	390
16—Circular from Treasury Department, July 26, 1886	556	390
17*a* and 17*b*—(Not set out)	557	390
18—Circular from Treasury Department, December 22, 1884	557	391
19*a*—Letter from Treasury Department to collector, January 12, 1885	559	392
19*b*—Letter from Treasury Department to collector, January 12, 1885	559	392
20 and 21—(Not set out)	561	393
22—Letter from Treasury Department to health officer, May 4, 1885	561	393
23*a*—Letter from health officer to Secretary of Treasury, May 29, 1885	562	394
23*b*—Copy of conclusions of conference held at Fifth Avenue hotel, April 23, 1883	562	394
23*c*, 24, and 25—(Not set out)	564	395
Judgment-roll	564	395
Summons	564	395
Complaint	565	395
Answer of Bartlett *et al.*	568	397
Answer of Smith	571	399
Extract from minutes of trial	574	400
Judgment	575	400
Notice of appeal to general term	576	401

	Original.	Print.
Bill of particulars	577	401
Order for judgment	•578	402
Judgment in general term	579	402
Notice of appeal to court of appeals	580	403
Clerk's certificate	589	403
Opinion in general term	581	404
Order for judgment on remittitur	589	408
Judgment on remittitur	593	410
Opinon of court of appeals	596	412
Assignment of errors	609	419
Clerk's certificate	612	420

a In pursuance whereof and according to the statute in such cases made and provided the record of the judgment aforesaid, with all things relating thereto, together with the said writ of error annexed, is hereby transmitted to the Supreme Court of the United States accordingly.

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of New York for the first judicial district, Greeting:

Because in the record and proceedings and also in the rendition, on February 10th, 1892, of the final judgment or decree of a plea in a suit which is in said supreme court, being the highest court of the State of New York in which a decision could be had in the said suit, which is between William Lockwood and Emory W. McClintock, as plaintiffs, and Edward B. Bartlett, Albert C. Woodruff, Henry E. Nitchie, and William M. Smith, as defendants, in favor of the plaintiffs, William Lockwood and Emory W. McClintock, and against the defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, for $3,914.05, with interest from June 13th, 1887, and wherein was claimed a title, right, privilege, or immunity under a statute of and also under a commission held or authority exercised under the United States and the decision was against the statute, right, title, privilege, or immunity specifically set up or claimed by the defendants, Bartlett, Woodruff, and Nitchie, above named, under such statute, commission, or authority, a manifest error hath happened, to the great damage of the said Edward B.
Bartlett, Albert C. Woodruff, and Henry E. Nitchie, as by
c their complaint in that behalf appears, we, being willing that
the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 7th day of March, 1892, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand eight hundred and ninety-two (1892).

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United
States of America for the Southern District
of New York, in the Second Circuit.

d [Endorsed:] U. S. Supreme Court. William Lockwood & ano. against Edward B. Bartlett & o'rs. Writ of error. Goodrich, Deady & Goodrich, def'ts' att'ys, 59 Wall street, New York. Brown Bro's' building. Appeal allowed; let writ of error issue. N. Y., Feb'y 11, 1892. C. H. Van Brunt, presiding justice supreme court, general term, first department. Filed Feb. 12, 1892.

e Supreme Court.

William Lockwood and Anothers
against
Edward B. Bartlett and Others.

City and County of New York, *ss:*

Percy G. B. Gilkes, being duly sworn, says that on the 12th day of February, 1892, he served upon Charles MacVeagh, a member of the firm of Bangs, Stetson, Tracy & MacVeagh, attorneys for the plaintiffs herein, and on said attorneys the supersedeas bond, assignment of errors, writ of error, and citation on appeal to the Supreme Court of the United States herein by delivering to and leaving with him copies of said papers, and at the same time exhibiting to him the originals with the judge's signature thereon.

P. G. B. GILKES.

Sworn to before me this 12th day of February, 1892.
FRED'K GIBLIN,
Notary Public, Kings County.

Certificate filed in New York county.

f United States of America, *ss:*

To William Lockwood and Emory W. M'Clintock, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the 7th day of March next, pursuant to writ of error filed in the office of the clerk of the county of New York, in the city of New York and State of New York, being the clerk of the supreme court of the State of New York in and for said county of New York, wherein Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie are plaintiffs in error and you, William Lockwood and Emory W. M'Clintock, are defendants in error, to show cause, if any there be, why the judgment in such writ of error mentioned, entered February 10th, 1892, in favor of William Lockwood and Emory W. M'Clintock and against Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie for $3,914.05, with interest from June 13th, 1887, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 11 day of Feb'y, 1892.

C. H. VAN BRUNT,
Presiding Justice Supreme Court,
General Term, First Department.

g [Endorsed:] U. S. Supreme Court. William Lockwood & ano. against Edward B. Bartlett & o'rs. Citation. Goodrich, Deady & Goodrich, att'ys for def'ts, 59 Wall street, New York, Brown Bro's' building. Filed Feb. 12, 1892.

h UNITED STATES OF AMERICA, *ss:*

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Witness Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 11th day of Feb'y, 1892.

C. H. VAN BRUNT,
Presd'g Justice Supreme Court,
Court *General Term, First Department.*

Endorsed: Supreme Court of the U. S. William Lockwood and another against Edward B. Bartlett and others. Citation. Goodrich, Deady & Goodrich, defendants' attorneys, 59 Wall street, New York, Brown Bro's' building.

i UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of New York for the first judicial district, Greeting:

Because in the record and proceedings and also in the rendition, on February 10th, 1892, of the final judgment or decree of a plea in a suit which is in said supreme court, being the highest court of the State of New York in which a decision could be had in the said suit, which is between William Lockwood and Emory W. M'Clintock, as plaintiffs, and Edward B. Bartlett, Albert C. Woodruff, Henry E. Nitchie, and William M. Smith, as defendants, in favor of the plaintiffs, William Lockwood and Emory W. M'Clintock, and against the defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, for $3,914.05, with interest from June 13th, 1887, and wherein was claimed a title, right, privilege, or immunity under a statute of and also under a commission held or authority exercised under the United States and the decision was against the statute, right, title, privilege, or immunity specifically set up or claimed by the defendants, Bartlett, Woodruff, and Nitchie, above named, under such statute, commission, or authority, a manifest error hath happened, to the great damage of the said Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, as by their complaint in that behalf appears, we, being willing that the error, j if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 7th day of March, 1892, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 12th day of February, in the year of our Lord one thousand eight hundred and ninety-two (1892).

JOHN A. SHIELDS,
[SEAL.] *Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.*

Endorsed: Supreme Court of the U. S. William Lockwood and another against Edward B. Bartlett and others. Writ of error. Goodrich, Deady & Goodrich, defendants' attorneys, 59 Wall street New York, Brown Bro's' building. Appeal allowed; let writ of error issue. N. Y., Feb'y 11, 1892. C. H. Van Brunt, presiding justice, supreme court, general term, first department.

k Supreme Court of the United States.

WILLIAM LOCKWOOD and EMORY W. M'CLINTOCK, Defendants in Error,
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and HENRY E. NITCHIE, Plaintiffs in Error.

Know all men by these presents that we, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, of the city of Brooklyn, county of Kings and State of New York, as principals, and William W. Flannagan, of the city of New York, county of New York, and Elihu Spicer, of the city of Brooklyn, county of Kings, as sureties, are held and firmly bound unto William Lockwood and Emory W. M'Clintock in the sum of eight thousand dollars, to be paid to said William Lockwood and Emory W. M'Clintock, their executors, administrators, or assigns; for which payment, well and truly to be made, we and each of us bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the 11th day of February, 1892.

Whereas the above-named Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered on the 10th day of February, 1892, in the above-entitled action by the supreme court of the State of New York in favor of the plaintiffs, William Lockwood and Emory W. M'Clintock, and against the defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, for the sum of $3,914.05 and interest from June 13th, 1887:

Now, therefore, the condition of this obligation is such that if the above-named Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

EDWARD B. BARTLETT. [SEAL.]
A. C. WOODRUFF. "
H. E. NITCHIE. "
W. W. FLANNAGAN. "
E. SPICER.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

William W. Flannagan, one of the sureties on the foregoing bond, being duly sworn, says that he is a resident of and freeholder within the State of New York, and is worth the sum of $16,000 over and above all his just debts and liabilities and exclusive of property exempt from execution by law.

W. W. FLANNAGAN.

Sworn to before me this 11th day of February, 1892.

FRED'K GIBLIN,
[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York county.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Elihu Spicer, one of the sureties on the foregoing bond, being duly sworn, says that he is a resident of and freeholder within the State of New York, and is worth the sum of $16,000 over and above all his just debts and liabilities and exclusive of property exempt from execution by law.

E. SPICER.

Sworn to before me this 11th day of February, 1892.

[SEAL.] FRED'K GIBLIN,
Notary Public, Kings County.

Certificate filed in New York county.

n UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

On this 11th day of February, one thousand eight hundred and ninety-two (1892), before me personally appeared Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, to me known and known to me to be the individuals described in and who excuted the foregoing bond, and they each severally acknowledged to me that they executed the same.

[SEAL.]

FRED'K GIBLIN,
Notary Public, Kings County.

Certificate filed in New York county.

Endorsed: Supreme Court of the U. S. William Lockwood and another against Edward B. Bartlett and others. Copy. Supersedeas bond. Goodrich, Deady & Goodrich, defendants' attorneys, 59 Wall street, New York, Brown Bro's' building. Within bond approved as to form and sufficiency of surety. N. Y., Feb'y 11, 1892. C. H. Van Brunt, presiding justice supreme court, first department. To Bangs, Stetson, Tracy & MacVeagh, att'ys for def'ts in error.

o STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 22nd day of December, in the year of our Lord one thousand eight hundred and ninety-one, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding; Gorham Parks, clerk.

Remittitur December 22nd, 1891.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Resp'd'ts,
ag'st
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and HENRY E. NITCHIE, App'l'nts.

Be it remembered that on the sixth day of January, in the year of our Lord one thousand eight hundred and ninety, Edward B. Bartlett and others, the appellants in this action, came here into the court of appeals, by Goodrich, Deady & Goodrich, their attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York; and William Lockwood and
another, the respondents in said action, afterwards appeared
p in said *action afterwards appeared in said* court of appeals by
Kelly & McRae, their attorneys.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

And afterwards, to wit, Dec. 26th, 1890, by an order duly entered, on consent, Bangs, Stetson, Tracy & MacVeagh were substituted as plaintiffs' attorneys herein in the place of Kelly & MacRae.

Whereupon the said court of appeals, having heard the cause argued by Mr. William W. Goodrich, of counsel for the appellants, and by Mr. Charles MacVeagh, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the general term of the supreme court appealed from in this action be, and the same is hereby, reversed and a new trial granted, costs to abide events, unless the plaintiffs stipulate within thirty days to reduce the recovery of damages to $3,182.50, and in that event the judgment so modified is affirmed, without costs to either party in this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be reversed, &c., as aforesaid.

q And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into *to* the said supreme court of the State of New York before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Dec. 22nd*, 1891.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] GORHAM PARKS, *Clerk.*

r Court of Appeals.

WILLIAM LOCKWOOD and Ano., Plaintiffs and Respondents,
against
EDWARD B. BARTLETT and Others, Defendants and Appellants.

Case on appeal.

Kelley & MacRae, attorneys for respondents; Goodrich, Deady & Goodrich, attorneys for appellants.

1 Supreme Court, New York County.

William Lockwood and Emory W. McClintock, Plaintiffs,
against
Edward B. Bartlett, Albert C. Woodruff, Henry E. Nitchie, and William M. Smith, Defendants.

This action was begun by the service of a summons and complaint on Albert C. Woodruff, on May 20, 1886, and upon William M. Smith, on May 25, 1886. The defendants, Edward B. Bartlett and Henry E. Nitchie, duly appeared on May 26, 1886. Issue was joined by the service of the answer of defendants Bartlett, Woodruff and Nitchie, on the 22d day of June, 1886, and the answer of defendant Smith, on June 12, 1886. There has been no change of parties since the commencement of the action. This action came on for trial on April 18, 1887, in part III of this court, before Hon. George L. Ingraham and a jury.

2 Plaintiffs' attorney opened the case to the jury on behalf of the plaintiffs, as follows:

May it please the court, and gentlemen of the jury. This is a case of importance, both to the plaintiffs and the defendants. It grows out of this state of facts: One of the defendants is the health officer of the port of New York. The other defendants are the firm of E. B. Bartlett & Co., who are warehousemen in the city of Brooklyn—at least, that is their business, or a part of it. That firm, or some of its partners, Mr. Bartlett especially, was interested in what was known as a disinfecting company. In the year 1884, I think, this disinfecting company was organized as a corporation, the defendant Bartlett being a stockholder and director of that company. The object of that company and of these defendants, as we will attempt to prove to you, was this: that all such articles as were imported into this city from abroad which this company thought needed disinfection, and Mr. Bartlett and his concern, as the warehousemen connected with that company thought, would be disinfected.

Now, one of the large articles of commerce that comes from abroad to the port of New York, is an article, which is probably the lowest article of commerce, in one sense, viz., rags. Large quanties of rags are imported here and are used in the manufacture of all kinds of paper, from the newspaper that is put on your table in the morning—even the Times—to the finest paper used by any of your wives and daughters; and the quantity of rags that comes to this port is enormous.

Now, our charge here is, and our proof will be, as we will claim, a serious charge against the health officer of New York co-operating
with Bartlett & Co., for the purpose of having rags disinfected
3 by their monopolistic process, so that the importers of rags
and the paper-makers of this country would be obliged to
pay, and did pay, thousands of dollars for that purpose.

Now, to shut out and cause the disinfection of rags, we will find the defendant Bartlett having the aid and co-operation of this health officer at this port, diligent in going to Washington and getting the United States Government, so far as it could, to assist them in this scheme. And to that end the public prints, the newspapers, were enlisted; correspondents in Washington of some of the papers were enlisted, and the public were made to feel and to think that there was great danger of the ravages of cholera from rags imported into this country, thus playing upon the fears and apprehensions of the public, for the public are very sensitive, and necessarily so, to a question of that kind, whether cholera should come here or not. And I say that they used these means, not only with the newspapers, but they used *it* with the Government, with every official who could be used for the purpose of furthering and promoting their ends. And, of course, the most necessary official to enlist to this end was the health officer of the port of New York. He was the person to whom the public of this city and State had intrusted the high and responsible duty of saying what should or should not come into this port as a clean or unclean article of commerce. This man was clothed with a tremendous power, so far as the paper merchants and rag importers of this city were concerned. They were distinctly and notoriously at his mercy. And I will say right here that there couldn't be anything more disastrous to the commerce of this city, more disastrous to merchants, for the whole chamber of commerce were interested in this question, whether this man, Dr. Smith, should act righteously or unjustly in the matter of allowing rags or other articles to come in here.

Well, some way or another, and, as we charge, improperly,
4 wrongfully and corruptly, he didn't use his high office for
the purpose of excluding merchandise that would bring contagion into this port, but he used his high office in combination and co-operation with these men for disinfecting rags, or the so-called disinfection of rags; not to exclude contagion, not to keep out of this port articles that would endanger the health of the public, but to allow them to come in here, pass them at quarantine, bring them here to the edges of these enormous cities, New York and Brooklyn, and there dump them first into the warehouse of Mr. Bartlett, thence to be disinfected in the way that they were, and the money paid before their owners could rescue the goods from Bartlett & Company, or this disinfecting company.

Now, I say our charge is here that the defendant Smith, the health officer of the city of New York, co-operated, conspired and sustained Bartlett & Company in this great wrong against, not only the paper merchants of this city and elsewhere, but, so far as this case goes, against my clients Lockwood & McClintock.

Now, what are the facts? In the spring of 1885, the plaintiffs imported rags from two places: From Japan, and from Leghorn, in Italy. Now, Dr. Smith had, by public notice, told merchants what they should do with respect to rags coming from the infected ports, that they should get the American consul's certificate that these rags were not gathered at an infected port, but come from a clean port, and that when that was done these rags should be passed through quarantine and delivered to the importer.

I say that the charge we make here is largely upon a vessel called the Vigilant, because is was on that vessel that the greater part of the rags that we claim for were carried. The Vigilant came here into this port, was passed through quarantine under the eye of Dr. Smith, came up here and anchored off pier 45, East river. 5 Lockwood & McClintock, the plaintiffs here, took the certificate of the American consul and the declaration that was required to be made by the exporter of the rags, to the health board of New York, where the rags were to be landed, and obtained the permit of that health board to land the rags.

Now, we claim that there, right there, Dr. Smith was used by Bartlett & Co., and this disinfecting company to arrest the landing of these rags; not upon any knowledge that they had that these were infected goods, that there was any disease whatever about them. If Dr. Smith had supposed and believed as health officer that there was any article aboard that vessel that ought not to come into the port of New York, he should not have passed the vessel through quarantine. It was a gross wrong on his part to do it. But he did it, and Lockwood & McClintock, the plaintiffs, complying with his own orders in that respect, and going to the health board here got their permit to land the goods. But that didn't suit Bartlett & Co. That didn't give them the right to carry off these goods and store them and put them through this process of disinfection. And so the hand of Smith, cunning as it was, veiled in every possible way—for he is a very cunning man, you have only to look in his face to see it, you don't want any better evidence than that, all through this matter he was cunning in his operations—I say, masked when he could be, but all the time co-operating with this bold man, and no bolder man comes before a jury than this same Mr. Bartlett; between his boldness and Dr. Smith's cunning, the merchant's of New York were in a bad fix. Now, they passed those goods here and we had a permit to land them. Why, Lockwood & McClintock were astonished when they went down to get their goods to find that somebody had interposed to stop the landing of those rags. And who was it? We found Mr. Bartlett active 6 at once, and we found Dr. Smith. We will show you that he counseled the collector of the port to interpose, under the guise of custom regulations, although rags are free, and nominally the collector has nothing to do with them except to enter them as free goods, and the only difficulty was that Dr. Smith had instructed and advised the collector of the port not to allow those goods to be landed. What could the plaintiffs do? They got out an injunction, or attempted to get out an injunction, in the city of Brooklyn against Bartlett & Co. seizing these goods. Bartlett & Co., warehousemen, disinfectors, caring nothing about the public health of the city of New York, seizing these goods, taking these goods, knowing very well that the health officer would stand by them in that, because you can see—I will admit that the health officer if he found anything on this ship, those rags or anything else, that was

dangerous to public health could arrest the vessel and prevent her from passing through quarantine. But no. We find Bartlett & Co., on deck at once ready to take these goods and put them through their warehouse, and through their disinfecting process, and they did. We attempted to replevin the goods, tried all sorts of remedies to get our goods which had been permitted to be landed here as perfectly clean, and we were stayed and stopped in every way until finally we had to yield and submit to the extortion, as we claim, of these defendants and pay the exorbitant price which we paid, which was five dollars a ton for the so-called disinfection of these rags, for we will show you that these rags were never disinfected, or only partially so; that it was a mere pretense; Dr. Smith was not down there to see whether these rags were disinfected if they contained contagious matter. He was not down there in the interest of the public health to see whether these strangers with no
official responsibility whatever did anything wrong; Bartlett
7 & Co. held no responsibility to the public or to the importers with respect to this work at all. But there they were ready and greedy to get the work so that they might get whatever they pleased to charge for them. And so for months these rags which had been purchased by Lockwood & McClintock, to be sold in June are detained until October through this so-called process of disinfection, and we had to submit.

Now, gentlemen of the jury, we will show you that there was no infection, there never was any pretense of infection on the part of the health officer, Dr. Smith, and Bartlett & Co. On the contrary, every order and every permit that was given in the case showed that there was no infection, no disease whatever about these rags, and that the whole purpose—gentlemen, I dislike to say so, but it is in the common expression—was nothing more or less than a species of blackmail upon the rag importers and merchants of the city of New York. Through years rags were being imported into this city, and in no instance could Dr. Smith as health officer indicate a case in which cholera had ever arisen in the city of New York or elsewhere, arising from the use or importation of rags. But he was the judge. Clothed with the responsibility, I say, of judging what was clean or unclean, what was prejudicial to the health of the city and endangered it, or what was not. This man, forgetting his high prerogative of duty to the State and to the great merchants of this city, with all the commerce of the world coming here, forgetting all that, I say, allowed himself to be enlisted in the service of Bartlett & Company, who I say were extorting money from these plaintiffs without any compensation to them or to the public whatsoever.

Counsel for defendant: We move to dismiss this case on the
plaintiff's opening and on the pleadings. On the ground,
8 first, it being admitted that one of the defendants is the health officer of the port, clothed with power and with discretion—the opening has shown the exercise of this very discretion. Under the statutes of the State one of the first requisites of his duty is to prevent the importation of rags without inspection, and the

statute reposes that discretion in him. In the second place, the charge is that he conspired in some way to prevent the performance of this duty, but not a fact is alleged to that effect, nor do plaintiffs even allege that they can prove it. They talk about co-operation, but that is all. And they, themselves, admit that the warehouse in which this disinfection was conducted, however perfect or not, was a warehouse leased to a paper stock company that is not a defendant here, and that the damages, as they claim, are simply, those that were incurred in the first place, by their delay in having disinfection, and finally in the process of disinfection itself.

Now, sir, where the first suggestion is that there was any conspiracy, that there was any combination, that there was any failure to use discretion or to carry out the purpose of the law, does not appear. And furthermore, it does not appear by the argument, as I suppose the court may possibly take judicial cognizance, that at this time this whole matter was under the control of the custom-house, and subject to the conditions of the United States Treasury, and it was the United States officer who exercised authority over this importation of old rags. The counsel has referred to that by saying that the collector of the port interfered. Now, however great the power, or arbitrary its exercise, without even, as I said before, the suggestion that they could prove it was corruptly exercised, and that it was exercised as charged in the complaint, in combination
or conspiracy, and that that conspiracy and combination
9 should be with this defendant, and with the fact admitted
that there was still another, I fail to see how it is connected
in any way.

And, so far as their admission goes, which I may be permitted to refer to only to qualify by saying that it is not the fact only so far as their statement goes, they show that the health officer permitted that vessel to come to the port of New York, pass quarantine, as they say, then that his authority had ceased, and these rags came within the control of the board of health, who is not a party, and the collector of the port of New York.

Now, their allegations, if they are to prove them, are of conspiracy and combination between these two defendants, Bartlett & Company, and Health Officer Smith, and a combination to prevent the entry of these rags. And they have further, to prove that one or both of these defendants seized the rags, and held them, and that they were damaged. And, I submit that there is not even a suggestion in the opening that any one of those facts is to be proved.

Counsel for plaintiffs: What we, in fact, claim here, is this: We don't dispute, although we might, the right of their sending these rags to any particular place to be disinfected. If these rags were infected in any way, and Dr. Smith could have imagined that fact, while we had abundant right to dispute under any law of the United States the right of anybody, from the President of the United States down to a policeman, to take merchandise belonging to any citizen, and deliver it over to any favorite individual, and allow that person to levy a toll upon it, we would claim that that was in violation of the fundamental rights of the citizen, but that

is not in this case. What we do claim in this case is, and I am the first that would be willing to concede, that where there is danger of infection in a port and the health of millions is at stake, that if ever a man was justified in overstepping his legal authority
10 it would be then. But we do claim in this case, as my asso-
ciate said, that these rags never came from an infected port; that Dr. Smith so certified and passed them at quarantine as free from infection; and after this ship was at her pier, and after he had certified to their being free from infection, he then urged the collector, in writing, to prevent the landing of these rags, and to send them to Bartlett & Company where they could work their sweet will on them, and he instructed the collector to do that. And we will show the success of the conspiracy, whereby these rags, which were free from infection, were delivered over to these parties, who charged us some seven thousand dollars, besides keeping us out of our property. And we will also show that, after Dr. Smith had certified that these rags were free from infection and didn't come from an infected district, after the ship was at her pier, and when his machinations resulted in the collector holding the goods, that then the health officer of Brooklyn said: "Well, if these goods are not fit to land in New York they are not fit to land in Brooklyn;" and Dr. Smith then went over to Brooklyn and certified that they were free from infection. So that the port of New York was open at Bartlett's store, so that they might levy blackmail, but it was closed at every other point.

The court denies the motion to dismiss on the opening. Counsel for defendants excepts.

Second day.

The plaintiffs called as a witness—

Emory W. McClintock, who being duly sworn, testified as follows on behalf of the plaintiffs.

By plaintiffs' counsel:

I am one of the plaintiffs in this action and Mr. William
11 Lockwood is my partner. The firm was Lockwood & Mc-
Clintock in the year 1885. Our firm in the spring or summer of 1885, imported rags upon the Exile, the Vigilant, the Battaglia, and the Lucy Nichols. That was part of our business. We have been engaged in that business fifteen years, or more, and we have imported them principally at this port. There is no duty upon rags. We first came in contact with the defendant Smith, the health officer of the port, in April, 1885. He was then acting health officer of this port. The spring of 1885 was the first time that we encountered any difficulty with respect to the landing of rags in the port of New York.

Q. State what occurred with respect to the landing of the rags between you and Dr. Smith?

(Question not answered.)

Q. You remember the arrival here of the vessel Vigilant?

Counsel for defendants: I object to any testimony such as is called for by this question, or any testimony as to the seizure of the ship, or any of the other acts complained of, until the parties have established to the satisfaction of the court a *prima facie* case of conspiracy between Dr. Smith and Mr. Bartlett.

The Court: It seems to me that these acts themselves are evidence to prove the conspiracy. I admit that the conspiracy should be proved first, but it seems to me that these acts can show it. For that reason I overrule the objection.

Defendants' counsel except.

A. Yes, sir; I do. Our firm had a large quantity of rags upon that vessel, namely, 2,920 bales. We saw Dr. Smith with regard to those rags which were on the Vigilant during the month of June. The vessel arrived the 30th of May. I don't know that I ever saw
the Vigilant. I met Mr. Bartlett, one of the defendants,
12 with respect to the rags on the Vigilant, in the office of Mr.
Fairchild, Assistant Secretary of the Treasury at Washington, early in June—on the 3d, 4th or the 5th of June. It is admitted that these are the documents received by the consignees of these rags from the health officer and from the board of health.

Plaintiffs' counsel offers the two papers in evidence, and the same are marked "Plaintiffs' Exhibits A and B respectively, April 19th, 1887," and reads them.

Q. After getting those permits what did you do with respect to this cargo of rags upon the Vigilant?

A. We never had either of those permits. We went to the board of health with the certificates from Japan.

Counsel for defendant Bartlett calls for the production of those papers.

Witness produces them.

Counsel for defendant Bartlett: I do not look at them, and I object to their introduction.

Offered in evidence.

Objected to as irrelevant, incompetent and immaterial. Objection overruled. Defendants' counsel except.

The Court: On reflection, I think these papers may be marked for identification. I don't think they are admissible now.

The two papers referred to are marked Plaintiffs' Exhibits C and D for identification.

Counsel for defendant Smith admits that quarantine regulations were regulations of quarantine in August, 1884, prior to the time that the Treasury Department issued its peremptory regulation, and,
as we understand it, they were not in force in 1885.

13 Counsel for plaintiffs: This was issued August 9, 1884.
When do you say it went out of existence?

The Court: It was issued in August, 1884, and it was not changed by any official notification of Dr. Smith's, the health officer of the port.

Counsel for defendant Smith: We think it was changed by him; and I will say that it was changed by this circular.

Counsel for plaintiffs: Is that endorsement of Dr. Smith on the back of that circular correct?

Counsel for defendant Smith: Yes, sir. I will admit that, except so far as modified by that circular of the Treasury Department, they have been unchanged.

The Court: You can put them both in together then, and say except as modified by the Treasury Department.

The quarantine regulations of the port of New York are marked Plaintiffs' Exhibit E, April 19, 1887; and the circular of the Treasury Department is marked Plaintiffs' Exhibit F, April 19, 1887.

Counsel for plaintiff: Now, in view of the endorsement upon the back of this circular, we again renew our offer of the consul's certificate, claiming that they were in compliance with the express regulation provided by the health officer of the port.

Counsel for defendant Bartlett: We object to that as not binding Mr. Bartlett at all until a conspiracy is proved. It is also incompetent to bind Mr. Bartlett until it is brought home to his notice.

Plaintiffs' counsel reads to the jury the endorsement of Dr. Smith on the back of Plaintiffs' Exhibit E, and also Exhibit E itself.

Q. After going to the board of health, what did you do with respect to the rags on the Vigilant?

A. We got the board of health's permit to land the goods.

14 Mr. Goodrich: It is understood that our objection goes to this testimony, and we except to its admission.

The Court: Yes.

By the Court:

Q. You received this paper from the board of health, this permit?

A. Yes, sir (witness producing a paper).

Counsel for defendant Bartlett: I object to that if it is offered before proof of conspiracy; also that it is incompetent testimony.

Objection overruled; defendants' counsel excepts; plaintiffs' counsel offers the paper in evidence, and the same is marked Plaintiffs' Exhibit G, April 19, 1887, and read; defendants' counsel objects to its admission, and excepts.

Q. What did you do about the rags then?

A. We went to the custom-house to enter the goods. The collector declined to receive our entry. We then went to Washington, to the Secretary of the Treasury's office, myself and our counsel.

Q. Have you got the permit of the Battaglia?

A. I haven't got it. Here is a copy of the quarantine pass (witness producing a paper). The original is in the office of the board of health.

Plaintiffs' counsel offers the permit in evidence, and it is marked Plaintiffs' Exhibit H, April 19, 1887, and read.

Plaintiffs' counsel (handing another paper to counsel for defendant Smith): Do you admit the genuineness of that?

Counsel for defendants: Yes, sir.

Plaintiffs' counsel offers the paper in evidence, and it is marked Plaintiffs' Exhibit I, April 19, 1887, and read.

15 Counsel for defendant Bartlett: There is a still further objection to this paper. It differs from the other permit to disinfect the rags at the Baltic stores, which have been designated by the Secretary of the Treasury as a bonded warehouse—for this paper has Robbin's reef designated. Now, my objection is that Mr. Bartlett is in no way connected with Robbin's reef.

Objection overruled; defendants' counsel except.

Counsel for plaintiffs: We claim that these two papers are the overt act of Smith, by which we were prevented from getting the goods. We will afterwards connect Mr. Bartlett with the Baltic stores.

Q. Did the rags upon the Vigilant go to the Baltic stores?

A. They did.

Q. What did you do with respect to preventing those rags going to the Baltic stores?

A. We tried in every way, with the Secretary of the Treasury and with the collector, to enter them. Then when they finally started for the Baltic stores and came off the ship, we applied for an injunction in Brooklyn forbidding them.

Counsel for defendant Smith: Against whom?

The Witness: The papers show.

By plaintiffs' counsel:

Q. Did Mr. Bartlett appear in that?

A. I don't know that he appeared in the papers; he appeared in the proceedings.

Q. I show you an affidavit of Mr. Bartlett (handing a paper to the witness).

Plaintiffs' counsel: I will have this affidavit marked. It is entitled "William Lockwood and another *vs.* The Paper Stock Disinfecting Company, William H. Robertson, collector, and others."

16 The Court: I think I will admit that fact—that he made such an affidavit. The contents of the affidavit are not proof of the fact.

Plaintiff's attorney: The only thing I want to prove is his connection with the disinfecting company; that he was a director of the company and a stockholder.

Counsel for Bartlett: We admit that Mr. Bartlett was a director and stockholder of the company during the time of the Vigilant and the Battaglia, and that the disinfecting company was working its process at Robin's reef and at the Baltic stores; but we object to this same testimony, that it is not admissible until the plaintiffs have proved the conspiracy; and because it is admitted before that we except.

Q. Did the rags upon these two ships go to the Baltic stores?

A. Those on the Vigilant did; those on the Battaglia went to the barge Erie at Robin's reef.

Q. I want to call your attention to what was done before Dr. Raymond in Brooklyn with respect to these rags. First, was Mr. Bartlett there?

A. Yes, sir.

(Counsel for Smith:)

Q. Was Dr. Smith there?

A. I don't think he was.

(By plaintiff's counsel:)

Q. Was the certificate of Dr. Smith there?

A. Yes, sir.

Counsel for defendants: We object to any testimony of conversation at that interview if Dr. Smith was not present.

The Court: I think it is competent to show what the official action of the health officer at that time was.

Defendants' counsel except.

Q. What was said there?

A. Mr. Bartlett said he wanted the lighters unloaded; that they
were his lighters. They were the lighters on which were the rags
out of the Vigilant. He wanted them all unloaded at the Baltic
stores. We wanted them sent to New York. We had Ex-
17 hibit G, and the health officer of Brooklyn, Dr. Raymond,
said he couldn't prevent those rags being landed in Brooklyn,
if they were free from infection, and they had been so stated to him
by Dr. Smith; he was obliged to allow them to land.

Counsel for defendants: We move to strike that out as hearsay. We object to it as incompetent, immaterial and irrelevant.

The Court: I will let it stand.

Defendants' counsel except.

The Witness: The health commissioner said he was obliged to allow the rags to be discharged at the Baltic stores; that we could take them, so far as he was concerned, as they were free from infection when landed there; they were so stated to him, as he had never allowed a bale of rags to land in Brooklyn without the health officer of the port certifying that they were free from infection before they went into the hands of the disinfecting company.

Q. Did Mr. Bartlett then take possession of the rags? What was done with the rags afterwards?

A. The rags were discharged at the Baltic stores. We went immediately from there and applied for an injunction in the action in which Mr. Bartlett made the affidavit which has been put in evidence. We got the goods from Mr. Bartlett's Baltic stores some months afterwards. He required money to be paid before he delivered the goods to us for disinfecting, for lighterage, for cartage and for storage. I produced the bill, which we paid. (Witness produces paper.)

The bill is offered in evidence.

Objected to as irrelevant, incompetent and immaterial. The bill is admitted and marked "Plaintiffs' Exhibit K, April 19th, 1887," and read.

Defendants' counsel except.

18 Witness continues: We endeavored to get those goods by replevin prior to the payment of this bill. That suit was discontinued. We paid that bill, and received this receipt.

Counsel for plaintiffs: Will you admit that this is a letter of Dr. Smith?

Counsel for defendants: I admit the authenticity of this letter, and that it was sent *to* Dr. Smith to the collector; but your honor understands that I am not conceding its competency or relevancy.

The letter is admitted and marked Plaintiffs' Exhibit L, April 19, 1887, and read.

Defendants' counsel except.

(By plaintiffs' counsel:)

Q. When did you see Dr. Smith, with reference to those certificates C and D?

A. On the 3d, 4th or 5th of June; one of those days; I don't know which.

Counsel for plaintiffs: I offer these papers, which have been marked C and D for identification, in evidence.

Defendants' counsel object. Admitted, and defendants' counsel except.

Counsel for defendant Bartlett: Do I now understand that the other side have exhausted their proof of conspiracy?

Counsel for plaintiffs: With the exception of the testimony of Dr. Raymond as to Dr. Smith's representations to him, you may consider that we have in all the overt acts, though we have several declarations to prove yet.

Counsel for defendant Bartlett: Now, we renew the objection. We claim that there is not the slightest proof of any conspiracy as alleged in the complaint.

Motion denied. Exception.

Plaintiffs' counsel: I will admit that on January 12, 1885,
19 the Secretary of the Treasury did designate these stores as
the place in which this disinfecting should take place.

Counsel for defendants: Then I desire to ask this witness whether there was any other warehouse designated by the Secretary of the Treasury to receive imported old rags up to some time in July, 1885?

A. The question, you know, is misleading; the Baltic stores was not the warehouse designated for the storage of old rags. It was only for such old rags as required disinfecting.

Q. Very well. Then we will put it in that form. Then I understand you to say that there was no other warehouse besides the Baltic stores designated by the Secretary of the Treasury for the reception of the imported old rags to be disinfected until some time in July, 1885?

A. No; I don't say about July, 1885.

(By the Court:)

Q. Up to June 10, 1885, was there any other storage warehouse designated by the Secretary of the Treasury?

A. No, sir; not that I know of.

Plaintiffs' counsel offers in evidence the circular of the Secretary of the Treasury, dated June 10, 1885, and the same is marked Plaintiffs' Exhibit L, April 19, 1887.

The letter of the collector of June 6th is put in evidence and marked Plaintiffs' Exhibit M, April 19, 1887.

Witness continuing: I saw Dr. Smith with reference to these certificates, Exhibits C and D, accompanying the rags on the Vigilant.

Q. What was said in reference to them?

Counsel for defendants objects to any proof in regard to these papers, even as to their existence, for the reason that there is no conspiracy proven between Dr. Smith and Mr. Bartlett.

Objection overruled. Exception.

20 A. Dr. Smith said there was no objection to those rags landing; that the collector should not make any trouble about them; that they had passed quarantine; that we had a permit from the city board of health, and they were entirely out of his jurisdiction. I asked him to endorse something to that effect on the papers. He declined to do it. I asked him to write a letter about it. He declined to do that as well. That is all he said under that head. That is all I could ask him to say.

Plaintiffs' counsel now offers in evidence the certificate- heretofore marked C and D for identification, and the same are admitted in evidence.

Defendants' counsel excepts.

Q. Who was present at the time?

A. Mr. Meyer. It was on the Staten Island ferry-boat, when I had started down to visit Dr. Smith.

(By the Court:)

Q. Was anything else stated about infection of the rags except what you have said?

A. That there was no suspicion of any infection; that he had done all he could; that he had passed them through quarantine; that the city board of health had permitted them to be landed, and that he had no further authority over them.

Q. What date was that?

A. It was a day or two before he wrote that letter to the collector.

Q. How do you know it was before?

A. I know it because I knew the telegram had been sent by the Secretary of the Treasury to the collector, telling him to put it all in Dr. Smith's hands, but that the telegram had not yet reached Dr. Smith. I knew of it before the collector did. It was prior to that, that I had gone to Washington.

Q. What took place at Washington when Mr. Bartlett was present?

Objected to. Objection overruled. Defendants' counsel excepts.

21 A. The first day that I was there Mr. Bartlett wasn't present. The second day when I went into the Secretary of the Treasury's office I found there Mr. Silas B. Dutcher. In a few moments Mr. Scott Smith, accompanied by Mr. Bartlett, came in. Mr. Scott Smith was secretary of the Paper Stock Disinfecting Company and the Washington correspondent of one of the papers; he and Mr. Bartlett came in together. There were present also Governor Boutwell, Mr. Meyer, Captain Gould, the Secretary of the Treasury and the Assistant Secretary, Mr. Fairchild.

Q. What was the subject of conversation?

A. We wanted to enter the rags. We wanted the Secretary to allow us to enter the rags, and presented the log book of the ship, and the captain's testimony and Mr. Meyer's testimony, who was one of the shippers of the rags, and we were met by Mr. Scott Smith, who said that we had evidence that these rags were not shipped before the 1st of January. Mr. Bartlett said that we had no permit to land the rags, that we had falsely stated, and that the matter was then settled by the Secretary, saying that he would instruct the collector. Mr. Scott Smith said as well—his argument why these rags should be sent to Bartlett's storehouse—was that Bartlett had established a disinfecting place there at an expense, and unless these rags were sent there Bartlett would lose money.

(By counsel for Bartlett:)

Q. The disinfecting company would?

A. The whole of them.

Q. What was the language used?

A. The parties who had established this disinfecting company. That is what he said: "The parties."

(By plaintiffs' counsel:)

Q. Did he say who they were?

A. No, sir.

Q. What did Mr. Bartlett say?

A. Mr. Bartlett said what I have repeated, about our falsely stating that we had a certificate to land the rags when we had not;

that it had been revoked. That is the language he used—
22 that we had never had a certificate; that it had been revoked.
The Secretary of the Treasury then remarked that he didn't see how it was possible to revoke a certificate that we had never had, and that wound up Mr. Bartlett on that conversation.

Q. You have said that the dispute before the Secretary of the Treasury was about the time when those goods were shipped?

A. About the time they arrived the dispute took place. The subject of discussion between Bartlett and Scott Smith on the one hand and me on the other before the Secretary of the Treasury was as to the time when the goods were shipped from Japan, I claiming that they were shipped before the first, and they claiming that they were shipped after the first of January. We had another cargo by the ship Exile; the rags that formed the cargo of the ship Vigilant were they a part of the same cargo that came in by the Exile—a part of the same consignment; were they from the same port, the fact being that one boat was full and another ship had to be chartered to bring them.

Q. What effect had this process of disinfection on the market value of these rags?

Objected to on the ground that no conspiracy has been proven; second, on the ground that no foundation is laid for the evidence, the witness not having been shown to have been an expert; also, that it is not shown that the witness ever saw these rags or the result of damage upon them.

Q. Did you ever see these rags after they came out of the custody of Bartlett & Co.?

A. A great many of them; I hardly think the larger part of them; 600 or 700 bales. I examined their condition.

Q. Are you able to state what effect upon the market value of the rags this process of disinfection supplied by Bartlett & Co. had; what effect it had upon the market value?

23 Counsel for defendant Smith: We also object to that, because that would require certainly very different testimony from this witness. So far as at present shown the witness is not shown to be an expert and he is unable, except to guess; and this question calls for an opinion which he is not qualified to give.

By the Court:

Q. How many years have you been dealing in rags?

A. Fifteen years and I am acquainted with that quality of rags. I am familiar with the various elements that effect their value, and I have bought and sold rags and know the market value.

(By counsel for Bartlett:)

Q. Did you see these rags before they went into the Baltic stores?

A. Some of them I did, 1,000 or 1,200 bales.

Q. Didn't you say that you did not see them before they went to the Baltic stores?

A. No, sir. I said I did not see the Vigilant—the ship.

Q. Did you see the rags at all?

A. I did.

Q. Did you open any of the bales?

A. No, sir.

(By plaintiffs' counsel:)

Q. I will ask the witness if they were ever disinfected at all; if there was not a sign or indication the 600 or 800 bales that he did examine, of disinfection whatever?

A. On a great many of them there was not. On about twenty per cent. only was there any evidence of any disinfecting. They had the appearance of having had a hole bored in them. The process of disinfection was as follows: A hollow perforated screw is put against a bale of rags, caused to turn round and it draws the bale of rags into a box; steam is then put through the screw; it is left there a few moments and taken out.

Q. Then, if a bale of rags had been subjected to such an operation as that, it would leave a very strong evidence of it in the shape of a big hole?

A. It would leave an evidence of a hole. You couldn't cover up the hole.

24 Q. Are they loose rags or are they banded together?

A. They are put up in compressed bales, compressed by a hydraulic press; a bale would be about three feet long, two feet broad and about two feet high, and would weigh from 350 to 400 pounds

(By the Court:)

Q. What was the value of those goods when they arrived?

A. Two and a half to two and three quarter cents a pound.

(By plaintiffs' counsel:)

Q. And about how many tons altogether went into the Baltic stores?

A. 2,920 bales went there, and about 400 pounds a bale; in round figures about $30,000.

Q. When the goods came out after being subjected to the disinfecting process, what were they worth?

Objected to on the ground that no foundation is laid for the question.

Objection overruled; defendants' counsel excepts.

A. About $22,000.

Q. Does that fumigation of these rags have any effect upon them; does it damage them, or does it benefit them in any way?

A. I haven't said that they were damaged.

Cross-examined by counsel for defendant Bartlett:

The Vigilant arrived on the 30th of May and went first to pier 45, East river, New York. I don't think we obtained a ship's permit for her to discharge cargo; I do not know whether we at any time applied for a ship's permit; it is necessary to obtain a permit from the collector of the port before a ship can be discharged; I do not know when and by whom any application for a permit to discharge the cargo was made to the collector of the port; I did not at any time make an application, that I recollect; I made an application for a permit to discharge a cargo. No, sir; our part of
25 the cargo—the part belonging to us. We only owned part
of the rags; we made application to discharge our rags early in June; I think the 1st or 2d of June; I did not obtain it; then we went to Washington.

Q. Did you learn why you didn't obtain the permit from the collector to discharge your part of the rags?

A. We were informed why by the collector. He said it was because the disinfecting company had objected to the rags being discharged unless they were sent for disinfection.

Q. Did you go to the board of health and make any representations there about this cargo?

A. I don't recollect whether I did, or whether my partner did, or whether both of us went together.

Q. Did you make any application to the board of health?

A. I don't know that I did, personally; some of our firm did; I don't know whether they sent Captain Gould, of the Vigilant, to the board of health.

Q. You have been called upon to produce the log book of the Vigilant; will you produce it?

A. I haven't got the log book; never had it.

Q. Do you know the signature of Captain Gould?

A. I don't believe I do.

Q. Do you know whether or not Captain Gould, on the application of your firm to the board of health in the early part of June, 1885, made an affidavit about those rags?

A. Yes, I do.

Q. He did make an affidavit?

A. Yes, sir.

Q. Is that it (handing paper to witness)?

A. I never saw this before.

Plaintiffs' counsel: We don't know anything about this, but we will admit it.

Defendants' counsel: I offer this in evidence as the affidavit of Captain Gould, of the ship Vigilant, made on the 9th of June, 1885.

Marked Defendants' Exhibit 1, April 19, 1887.

26 Q. On the first application to the board of health for a
permit, was it represented on the part of your firm that these goods were all shipped prior to the 1st of January, 1885, so far as you know?

A. No.

Q. You didn't make that representation?

A. No.

Q. Did you not make the representation to the Secretary of the Treasury?

A. One day, and the next day I corrected it.

Q. Then, as a fact, the goods were not shipped prior to the 1st of January?

A. All except 100 tons.

Defendants' counsel reads to the jury Defendants' Exhibit 1.

Q. Do you know whether or not the log of the ship Vigilant represented these rags as being all on board prior to the 1st of January?

A. I do.

Q. What was it?

A. All except 100 tons; just what the captain's affidavit says, and just what I said before.

Q. Was it not a fact that the log of the Vigilant represented all the rags as being on board prior to January 1st?

A. No, it did not; all except 100 tons. I was aware at the time of the arrival of the Vigilant that the terms and conditions of the circular of December 22, 1884, which is in evidence here, were in force and governed the action of the custom house authorities in respect to old rags. I was also aware of the provisions of that circular that no old rags should be admitted without disinfection—rags that were shipped after the first of January, 1885. Those are not the precise words that you have mentioned. December 22, 1884, is the date of the circular.

Q. Without the order of the collector of the port of New York, or the Secretary of the Treasury, was it possible to obtain the discharge of those rags on the Vigilant prior to the issue of the circular of June 10, 1885?

Objected to; objection sustained; defendants' counsel except.

27 Q. Was the application of your firm to the board of health of the City of New York and your visit to Washington occasioned by the condition of that circular of December 22, 1884, preventing the discharge of rags after the 1st of January unless they were disinfected? What was the occasion of your visit to Washington?

A. Because the collector declined to allow us to enter the rags.

Q. When did you return from Washington from that interview with the Secretary of the Treasury?

A. Somewhere between the 2d and 6th of June. The Vigilant lay on the 6th of June at pier 45, East river. Her cargo was sent to the Baltic stores on the 10th of June, I think. The papers show. I have forgotten.

Q. Was it sent under this order which I now show you (handing paper to witness)?

A. I presume so.

By the Court:

Q. Did you ever see that paper before?
A. Never.
Q. Did you ever hear of it?
A. No, sir.

Plaintiffs' attorney: We will admit that that order was issued.
Defendants' counsel: I offer that paper in evidence.
Marked Defendants' Exhibit 2, April 19th, 1887, and read.

(Witness continuing:) R. Wynkoop is deputy collector, I think, and J. J. Couch is a naval officer.

Q. At that time was there a custom-house inspector on board in charge of this vessel?
A. I don't know.
Q. Do you know the custom-house inspector who was in charge of the ship Vigilant on the 9th of June?
A. I do not.
Q. Do you know whether there was one there or not?
A. I do not.
28 Q. Can a ship be discharged without one?
A. They ought not to be.
Q. As a fact, could a ship at that time be discharged without an inspector?
A. Yes, it could have been, but ought not to have been. Under the custom-house regulations, though, it is necessary that an inspector should be there.
Q. Is this the order referred to as the order of June 3d, 1885, in the body, Defendants' Exhibit 2 (handing paper to witness)?
A. I don't know.

Mr. Prentice: We offer it in evidence as the paper.
Mr. Cochran: We cannot admit it.
Mr. Goodrich: It is identified by the letter, Exhibit 2.
Mr. Prentice: Very well. I will withdraw the offer. I am informed that it may refer to something else.

Q. Was there a custom-house inspector to superintend or inspect the disinfection of these rags while they were at the Baltic stores?
A. I don't know.
Q. Do you know whether the inspector in charge of the Vigilant ever made a return of the disinfection of rags on the Vigilant?
A. No, sir.
Q. Was this process in use at the Baltic stores for the disinfection of old rags one of the four processes described in the circular of December 22d, 1884?
A. I don't think it was.
Q. Wherein did that process differ from the one that I now read to you: "4. Disinfection in the bale by means of perforated screws or tubes through which * * * at a temperature of 330 degrees shall be forced under a pressure of four atmospheres for a period sufficient to insure thorough disinfection?"
A. I think it was that process. I don't think it was ever forced

through at a temperature of 330 degrees long enough to secure disinfection.

Q. In every other respect besides the length of time of 29 exposure, was it similar to this?

A. I don't believe that the steam was as high as 330 degrees.

Q. How do you know that the steam was not of this degree of heat and that the exposure was of a less time?

A. I haven't said I didn't know; I said I don't think so. I have seen the work done. I have seen the length of time a bale was in the box, and I have seen it come out, and I have been able to go and put my hand on it within a minute; and if it were heated to a temperature of 330 degrees, my common sense tells me that you couldn't handle it within a minute after it came out. Those rags were some that they were experimenting on to show how the work was done. It was some months before; I don't recollect exactly. It is my impression that it was in the spring of 1885, but I am not positive. Mr. Lockwood and I think Mr. Parker were there, Samuel W. Parker; I went there at his invitation. He was president of the Paper Stock Disinfecting Company. I don't recollect who else. It was at the Baltic stores. The rags were, I think, some that I sent there. I don't know from what ship. I think I saw the experiment one other time, but I am not positive. It was afterwards, I think. Mr. Bartlett was present at that time. I hadn't seen him up to that time.

Q. Was lighterage charged for the discharge of the rags in order to take them to the warehouse?

A. It is my impression that the ship didn't discharge at the dock; some other dock. She had lighters. According to the custom here a ship goes where the largest amount of her cargo is consigned. A ship goes where her consignees want her to go.

Q. And that is governed by the largest amount of the cargo?

A. That may be.

Q. And the rest of the cargo has to be lightered, doesn't it?

A. It has to be lightered or trucked away. It has to be taken away from the ship's side.

30 Q. Did you make any objection to the charge for lighterage in this bill, Exhibit K?

A. Certainly.

Q. What was the objection?

A. It was all wrong—the whole of it.

Q. Had you offered to pay all the charges mentioned in this bill for lighterage and for services in disinfecting prior to the 9th of October, 1885?

A. I don't think we had. I don't know.

Q. Your attempt prior to that time had been to obtain the goods without paying anything?

A. Yes, sir; that is, the bill was incorrect.

Q. You verified the complaint in this action, didn't you?

A. Yes, sir.

Q. Did you swear to this allegation: "That said Smith, with intent to wrong and injure plaintiffs, wrongfully and unlawfully conspired and combined with said Bartlett & Co. to have said rags of plaintiffs on said vessels condemned as unclean and infectious property, and to require said rags to be disinfected under the process used by said Bartlett & Co. so that said Bartlett & Co. would be able and entitled to charge plaintiffs therefor, and to hold and keep said rags until such charges were paid?" Did you swear to that?

A. I did.

Q. What was your knowledge on which that was based?

A. When the Exile arrived here she got the ordinary pass from quarantine.

Q. Did that pass differ from the pass you got here?

A. Yes, a little. Her cargo is general rags. That is all. She got the permit on the 11th of April. We took the original certificates as to those goods to the board of health and obtained our permit to discharge. At the custom-house we were stopped entering them. I went on to Washington. There I met Mr. Scott Smith who protested against the rags being entered on the ground that they were not shipped before the 1st of January. Scott Smith is secretary of the Paper Stock Disinfecting Company. The Secretary of the Treasury telegraphed to the collector that the
31 rags of Lockwood & McClintock should be entered with the
approval of the proper health authorities. We had the permit from the health board and we took it to the custom-house and entered the rags. The vessel commenced to discharge. We were informed at the custom-house that the disinfecting gang were going to stop the rags through the health officer. We went up to the ship. A policeman came down from the board of health and asked to see the permit and took it away with him; he said they should discharge no more rags, nor not move those from the dock. We went up to the health board and were informed that it was done by order of Dr. Smith, whom we had better see. Mr. Lockwood and myself went to quarantine, where we saw Dr. Smith. We introduced ourselves as owners of the rags on the Exile, and told him we had been informed at the board of health that he had stopped the discharge of the rags, and we asked him the reason. He said he understood that the rags were not shipped prior to the first of January. I asked him what we had to do with it from a sanitary point of view. He made no reply, but he asked if we had seen his circular of August 9, 1884. We told him no. He said that every merchant ought to have it in his scrap book. We produced the copies of the certificate that we had lodged with the board of health before him. He read them and said, "Well, I don't know whether these are originals or not. You mark them copies. Anybody can make out copies and call them originals." We told him the originals were in the board of health. Then he said he would see us at the board of health that afternoon. When he arrived from quarantine he went to the office of E. B. Bartlett & Co., where he had a long conference.

Q. How do you know that?

A. We had him followed there, and from there right to the board

of health. At the board of health he conferred with some gentlemen. We didn't hear what he said, but he came out, waved
32 his hand, went away, and the permit was handed back to us and we got the goods. The same certificates precisely. He stopped the goods on the Battaglia and ordered them disinfected. Those are the reasons.

Q. Now, sir, have you stated all the facts within your knowledge, all your suspicions, and all your information on which you base this charge in the fifth paragraph of your complaint, that he unlawfully and wrongfully combined to defraud you by sending the cargoes of rags on the Vigilant and Battaglia to the Baltic stores?

A. No.

Q. Let us have the rest?

A. Dr. Smith said—I don't recollect the time, but it was before the suit was commenced—he said, after a meeting of the board of health, that he would do anything he could for us; he would like to relieve us. I asked him how, and he said the only way he could help us was to order them to be disinfected at Mr. Bartlett's warehouse. He said it could be done by superheated steam; that was the only thing.

Q. Did he name the process?

A. Superheated steam.

Q. That is the only name he gave it, was it?

A. That is all I recollect.

Q. Who was present at that interview?

A. Mr. Warren, of Boston, and Mr. Heinoven.

Q. And that is at a hearing when you appeared, with counsel, before the board of health?

A. No, sir; it was after the hearing that this conversation took place; when the vessel was here, before she was landed.

Q. It was after June, 1884, wasn't it?

A. Within a few days. Then, again, Dr. Smith's action in the Lucy Nichol, another vessel we had here, causing us to drive her cargo around to Philadelphia, and Mr. Bartlett following it over there to the board of health, and protesting against it being landed there, and locking up the property three or four months, quoting Dr. Smith, saying he had not passed the goods; also causing us to take a vessel to Perth Amboy, and another around to
33 Portland. All of those things led me to swear to that affidavit.

Q. You imagine, then, that all these acts to which your now refer were the acts of Dr. William M. Smith?

A. Certainly; I know it.

Q. And you also imagine that all of these acts were corruptly done?

A. I do.

Q. And you have felt for a long time very much incensed against Dr. Smith?

A. How could I feel otherwise? Yes, sir; I have.

Q. In other words, you are very mad at him?

A. I feel outraged; I feel that I have been robbed.

Q. Were any other facts or information the basis of your allegation in this complaint?

A. From all of the knowledge I could gather, from all I could reach, from all I could learn by study, I was thoroughly convinced that there was no necessity for disinfecting the rags. Dr. Smith, I had been informed, so stated himself, until this patent disinfecting arrangement was gotten up. There never was a word said about it until after that patent was issued. It was never heard of in any country. I was convinced from all I could learn that it was a corrupt scheme. The process itself, I was convinced, was nonsensical; it was not carried out; it was not used; it was merely a cover to get our property into their hands and take our money for it.

Counsel for defendants: A swindle on the part of Dr. Smith?

The Witness: And Mr. Bartlett.

Q. You have stated, in the course of your examination, every word that you yourself heard Dr. Smith say, haven't you?

A. Oh, no.

Q. Have you had any more conversations with him on this subject?

A. Oh, very likely.

Q. When and where, and what was said?

A. I can't recollect.

Q. Can you recollect a single other statement at any time made by Dr. Smith than those that you have already given?

A. Yes, sir.

34 Q. Let us have them.

A. At the quarantine commissioner's office I had an interview with him about the Battaglia. It was on the 18th of June—17th or 18th. He had said that the rags on the Battaglia, if accompanied with the same certificates as the Exile had, together with another form that he wanted, which we had, should be passed.

Q. When had he made that previous statement?

A. I don't recollect; sometime previous to that. I think he made it in my presence; if not, I had heard it, so that it was thoroughly impressed upon me. That previous statement was made at quarantine, I think; when I heard that the custom-house wouldn't allow them to be entered, I was astounded, and I looked up Dr. Smith right away; this was in regard to the rags on the Battaglia.

By the Court:

Q. When was that former interview that you refer to?

A. Oh, I don't recollect that.

Q. Where was it?

A. I don't recollect that either. I don't recollect that he told me so; but I was informed of it. He either told me or my partner did. I went there and asked him why these rags on the Battaglia had been stopped. He said, "Why everything has to be disinfected." I said, "But they have got the certificates that you require." "Well," he said, "they have to be stopped." I talked a little harshly to him because I felt outraged, and he jumped up and said

I had my remedy. And I told him I knew it and proposed to take it. I asked him where he had ordered the goods on the Battaglia to be taken. He said he hadn't ordered them to be taken any place; that he hadn't any authority. He had merely said that they ought to be disinfected. I went down to the custom-house and told them, and they handed me this thing (witness referring to a paper) in his own handwriting, ordering them to Robbin's reef. That interview was in the presence of Mr. Judd and Mr. Morris Smith.

35 Q. Anybody else?

A. There was another gentleman, I think.

Counsel for plaintiffs:

Q. Mr. Platt, familiarly called Tom?

A. No; Mr. Platt was not there then.

By counsel for defendants:

Q. At that time had the Battaglia been ordered away from Brooklyn by the health commissioner?

A. She never was in Brooklyn.

Q. Had the health commissioner there refused to permit the discharge of rags in Brooklyn?

A. Unless she brought the usual certificate from Dr. Smith that she was not infected, he had. There it is, in his own handwriting.

Q. The question requires an answer, yes or no. Had he or not, to your knowledge, refused to permit those rags to be discharged in Brooklyn?

The Court: He made the endorsement on Exhibit I?

The Witness: Yes, sir.

Q. And that is the only action the health commissioner took upon it?

A. That was June 17th.

Q. At or prior to the 17th of June had the Treasury Department approved of the disinfection of rags at Robbin's reef in lighters?

A. No.

Q. Do you mean you don't know?

A. They never did. The Treasury Department were off of the regulation before then, and turned it all over to Dr. Smith.

Q. Where was Robbin's reef?

A. To the best of my knowledge, it is north of Staten island.

Q. Is it within quarantine limits?

A. I think it is outside.

Q. Is it within your knowledge, as a merchant in the city of New York, that vessels undergoing quarantine or to be lightered have frequently been detained under the orders of the preceding health officer, as well as Dr. Smith, at Robbin's reef for that purpose?

A. No, sir.

Q. Have you now stated every fact, all information and all imagination?

36 A. No. Dr. Smith's falsifications was one of the reasons why I felt so badly towards him.

Q. His falsifications in what?

A. He says in that letter of June 6th to the collector that he has an affidavit in his possession from one who had personally examined the log of the Vigilant. I wrote him for a copy of that affidavit. He did not know that I had seen or had any copy of his letter, but he answered my letter in this way on June 27th: "Yours of 26th instant is at hand, in which you request to see and make a copy of the affidavit referred to in your (my) letter of the 6th instant, addressed to Hon. W. H. Robertson, collector. I beg leave to assure you that I made no reference to an affidavit in my letter to the collector of the 6th instant."

Marked in evidence, Plaintiffs' Exhibit O, April 19, 1887.

The Witness: He also, in that letter, quotes a communication from the State board of health under late date, and goes on to speak about a case of small-pox in the mills of Ypsilanti; that letter said that case of small-pox occurred nine years before this late date of his letter. That is another one of his ways of doing things.

Counsel for Defendant Bartlett: More corrupt, you mean?

A. So far as being any corruption in that, it was merely a part of his deception and general plan of doing things.

Q. The letter that you have read from Dr. Smith was in reply to a letter of yours?

A. Yes, sir.

Q. What was the date of your letter?

A. June 26th.

Q. And his?

A. June 27th.

Q. Did you not immediately afterwards receive a letter from Dr. Smith informing you that he had made a mistake and offering you an opportunity to copy that affidavit?

A. I wrote him in reply to that and quoted a clause in his letter
to the collector, and then I got a letter from him saying
37 that he had made a mistake. I have not that second letter
of Dr. Smith's.

Q. Are these not the two letters to which you refer (handing to the witness two letters of June 26th and July 1st)?

A. No, sir; this one of June 26th is.

Q. Are these two your letters?

A. Yes, sir.

Counsel for Smith: We will have them marked in evidence.

The two letters are marked Defendants' Exhibits 3 and 4 respectively, of April 19, 1887, and the same are read.

Q. Is that the second letter to which you refer in your testimony (handing Exhibit 4 to witness)?

A. No, sir.

Q. Will you now swear that there was a third letter?

A. Yes, sir; one between those two dates; our firm took a copy of this affidavit which you show me.

The affidavit referred to is marked Defendants' Exhibit 5, April 19, 1887.

Q. Then, when you did visit Dr. Smith you found that he did have an affidavit to which reference is made in his letter, which is the affidavit now marked?

A. But not such an affidavit as he stated he had in his letter of June 6th. I refer to this passage: "An affidavit has been submitted to me in which the captain declares that he has personally seen the log of the Vigilant, and stating that the same was produced before Assistant Secretary Fairchild, and by which it appeared that rags were received on board said ship up to the 16th of January, 1885."

Q. This affidavit, as I said, "the log book being exhibited, it appeared that rags were received on board said ship up to the 16th of January; that upon being questioned Captain Gould admit-
38 ted having received rags until nearly the date of sailing, and
that he had signed a bill of lading for said rags, dated in December, 1884." Did you find any contradiction?

A. Dr. Smith's letter says he has an affidavit from a party who said he had personally examined the log of the ship Vigilant, and he don't say so.

Q. I will read the whole of the affidavit, then:

"W. Scott Smith deposeth and says that he was present at the hearing in Washington, D. C., before Assistant Secretary of the Treasury Fairchild, on Wednesday and Thursday, June 3d and 4th, in reference to the rags on the ship Vigilant, from Hioga, Japan. That on the first day named the statement was made to Secretary Fairchild by one of the owners of said rags, as well as by their counsel, that said rags had been loaded on said ship Vigilant during the month of December, 1884, as shown by a bill of lading signed by the captain; that on the following day, June 4th, the same parties appeared, together with Captain Gould, the captain of said ship, who produced his log book, which was examined by Secretary Fairchild; that the owners of said rags, through counsel, admitted and stated that the statement made the day previous as to the rags all being on board of said ship in December, was incorrect, and they desired to modify it. The log book being exhibited, it appeared by it that rags were received on board said ship up to the 16th day of January, 1885. That upon being questioned Captain Gould admit-ed having received rags until nearly the date of sailing, and that he had signed a bill of lading for said rags dated in December, 1884."

Now, that is the affidavit, isn't it?

A. Yes, sir.

Q. Do you still maintain that there is an incorrect description of his affidavit in the letter of June 6th?

A. In the way that I say; yes, sir.

39 Q. That, now, is all your information and all your facts, is it?

A. All that I recollect at the moment.

Q. Now, sir, was it just that information and just those facts and no more that were the basis of your allegation in the sixth paragraph of the complaint?

A. Yes, sir.

Q. And you think it is equally true of the previous allegation?

A. Yes, sir.

Q. Were you aware at the time you swore to that allegation that these goods had been sent to the Baltic stores under this order, Defendants' Exhibit No. 2?

A. I cannot answer that truthfully, yes or no.

Q. You verified this complaint on the 16th of May, 1886. How long prior to that had you been aware that this order of June 9th, 1885, Exhibit 2, had been issued from the custom-house of New York, that the inspector in charge of the ship Vigilant, from Japan, under general orders made June 3d, 1885, will allow to be landed and will send on board bonded lighters to Baltic stores for disinfection all rags for which no permit shall have been received?

A. I never was aware of it until today.

Q. Then do I understand that the allegations in the 6th paragraph of the complaint were made by you in ignorance of the fact that the rags on board the Vigilant were sent to the Baltic stores under this custom-house order?

A. Under that order, I don't know.

Q. Were those allegations made by you in ignorance of the fact of the issue of that order, or with knowledge that that order had been issued?

A. I never knew that order had been issued until today.

Q. Have you any personal knowledge that one dollar ever came to Dr. Smith by reason of the disinfection of any rags?

A. No, sir.

Q. Have you any personal knowledge that Dr. Smith had any stock or interest in the Paper Stock Disinfecting Company?

A. No, sir; only this. Dr. Smith, at this interview at the board of health, said that before he had anything to do with this disinfecting company they had sent a clerk to him two or three times and finally told him it would be to his interest to look into the thing. He told them he was competent to take care of his own interests; and afterwards, he said, one of the proprietors of the company came to him, and then he did go and look into it.

Q. I ask you the question again (repeating former question).

A. I can only answer as I did before: no.

Q. Was the price of rags the same in October that it was in June, in the market; that is old rags, these grades?

A. Yes, the Battaglia's rags were sold for the same.

Q. Was the market price the same?

A. No; the Vigilant's were not. The Battaglia's rags came from Italy and the Vigilant's from Japan. I think the grade of the Vigilant's rags had declined between June and October, but I don't feel particularly well posted. I do not consider any journal an authority on the quotations of rags; and there are no price-lists of rags

that I know of. I have no personal knowledge whether small-pox, dip-theria, scarlet fever or cholera prevailed in any parts of Japan in the year 1884, nor any personal knowledge of any district from which any one bale of the Vigilant's cargo came in Japan, only from Hioga, which is a city—the port of shipment for the port Osaka. I have no personal knowledge of how large a region these rags were gathered in. I was not aware of the fact when I made the allegations in this complaint that the health officers in conference had adopted resolutions to govern the disinfecting of imported rags, which had been adopted by the Secretary of the Treasury. I have made myself acquainted with resolutions adopted by State health officers or boards of health in respect to the disinfec-
41 tion of imported old rags, but I was not acquainted with the result of the conferences of State board of health officers, which were communicated to the Secretary of the Treasury in December, 1884, and embodied in the circular of December 22d, 1884. I was acquainted, through Dr. Smith, with the results, in resolutions adopted at the conference of State health officers and quarantine authorities, at the Fifth Avenue hotel, in April, 1885, but I am not aware of the fact that those resolutions and conclusions were public.

Q. At the time you verified that complaint were you acquainted with the fact that the Department of State had issued the circular which I now show you, dated July 17, 1885 (handing paper to witness)?

A. I think I have seen that paper before. There was an application made in this case, for several depositions to be taken on the part of the plaintiff, and I think I furnished the names of those witnesses to our counsel, Hamilton & Son, of Pennsylvania; but no commission was issued to them because they agreed to come here and testify. They were here today.

Q. Do you know as a fact that small-pox occurred in their paper mill among their rag-pickers?

Objected to. Objection sustained. Defendants' counsel except.

Defendants' counsel offers in evidence a circular issued by the Department of State, dated July 17, 1885, and letter attached thereto. Admitted and marked Defendants' Exhibit 6 and 6*a*, April 19th, 1887.

Q. Have you recently inspected the breaking out of an epidemic, in the Parsons paper mill, at Holyoke, Massachusetts, among the rag-sorters there?

A. One case there, if that is an epidemic. One man was taken sick there while he was working, and he died.

By the Court:

Q. Is that all you know about it?

A. Yes, sir.

42 Third day.

Q. Did you at any time after the arrival of the Vigilant or the Battaglia, propose to disinfect the rags by any process whatever?

A. Not that I recollect.

Q. In fact your effort throughout that year, in all the old rags you imported, was to avoid disinfection, was it not?

Objected to; objection sustained. Defendants' counsel except.

Q. In your answer to me yesterday that the Secretary of the Treasury hadn't approved, so far as your knowledge went, the selection of Robbin's reef, or any other place than the Baltic stores for the disinfection of rags, were you acquainted with his letter of March 7th, 1885, which I now show you and the exhibit attached to it (handing papers to witness)?

A. No, sir.

Q. Having now seen that letter of March 7th, 1885, do you still maintain in your answer that the Secretary of the Treasury hadn't approved of the selection of Robbin's reef, or any other point, for the disinfection of imported rags?

Objected to on the ground that the question assumes a statement of the witness which is not borne out by testimony.

Counsel for defendants: On page 41 of the stenographer's minutes you will find this: "Very well. We will put them in that form. I understand you to say there was no other warehouse besides the Baltic stores designated by the Secretary of the Treasury for the reception of imported old rags to be disinfected until some time in July, 1885? A. I don't say about July, 1885.

Q. Up to June 10th, 1885, was there any storehouse designated by the Secretary of the Treasury? A. No; not that I know of."

43 The Court: You may put the question. I think the fair purport of that answer is that he had no knowledge of it.

Counsel for plaintiffs: If you want to introduce this letter as a separate piece of evidence I make no objection to it.

Counsel for defendants: I ask my question and I offer this letter in evidence.

The letter referred to is marked "Defendants' Exhibit 7, April 20th, 1887," and read.

Repeated.

Objection by plaintiffs' counsel; objection sustained. Defendants' counsel except.

The Court: Mr. Goodrich, will you hand me the original discharge order of this ship and the modified one to the Baltic stores?

Counsel for defendants: We offer in evidence the order of the 3d of June. We offered it yesterday but it is not yet in.

Counsel for plaintiffs: We will agree that it go in with the understanding that I may move to have it stricken out if it should be shown hereafter that it has no reference to the case.

The Court: Yes.

Marked Defendants' Exhibit 8, April 20th, 1887.

JOHN V. VAN ARSDALE, a witness called on behalf of the defendants, being duly sworn, testified as follows:

Examined by counsel for defendant Bartlett:

I am a clerk in the custom-house, and am here on subpœna, *duces tecum*. The four papers now shown me are receipts by the storekeeper at Bartlett stores, showing that these goods were received there, and they indicate that the cargo was discharged under general orders into a bonded warehouse.

44 By the Court: In whose writing are those?

A. I couldn't say.

Cross-examination by counsel for plaintiffs:

Q. From the general method of the custom-house, are those kept by the proprietors of the stores and filled up by them?

A. Sent in by the inspectors of the vessel. The inspector is stationed at the vessel, on the dock. Those indicate that those rags were discharged to Bartlett stores, and were taken and received by the storekeeper. The bonded warehouse in this instance is the bonded warehouse that is owned by the Bartletts, and known as the Bartlett stores, indicating that they are the proprietors of the warehouse. Those particular rags went there.

The four receipts referred to are offered in evidence by defendants' counsel.

Admitted and marked Defendants' Exhibits 9, 10, 11 and 12, respectively, April 20th, 1887.

Witness continuing: Rags are duty free.

Q. Does that paper, Exhibit 9, indicate that the only purpose for which those goods are detained in the bonded warehouse is to have them disinfected?

A. I couldn't say that.

Q. Does it convey any such impression to you?

A. I don't know. It don't say anything about it.

Q. I beg your pardon. It says "disinfected" at the top.

A. Oh, yes.

Q. Is there any regular method of doing business that would give that word "disinfected," at the top of that paper, a certain meaning?

A. I suppose they were sent there for that purpose. That is what that paper would indicate to me.

45 Redirect examination by counsel for defendant:

I do not know the location of Bartlett stores, Brooklyn, north and south.

Q. Noticing on these receipts that it says: "Received in public store, E. B. Bartlett, south from the ship Vigilant" certain rags. Don't you know that the south store is a bonded warehouse?

A. That I couldn't say.

To the Court: From the form of the receipt I know that the store is a bonded warehouse. When a ship arrives in port with a cargo for discharge, the first thing that is done at the custom-house to enable the ship to discharge is that a permit is issued.

Q. Is this a specimen of a permit, or is it the general order (handing Exhibit 8 to witness)?

A. This is the general-order permit. That is the first paper that is issued in a case like this where the ship has some dutiable and some non-dutiable goods on board. Under that paper, if no other permit is given to a ship which varies its terms, the whole cargo, where it is not taken away by the consignees and the duties on it paid, goes to the general-order stores, to a bonded warehouse. In other words, the collector of the port indicates where the goods shall go, in a case like that. Unclaimed goods, general-order goods, fall within the designation of general-order goods if no permit is issued and no claim made.

By plaintiffs' counsel:

Q. Where a vessel docks as this one did at pier 45 East river, is it not the usual custom of the authorities at the custom-house to send the goods to the general-order store in the district adjacent to the place where the vessel is docked?

A. No; I couldn't answer that. I don't know; I am not an inspector.

Q. Are you not familiar with the custom of the authorities
46 in placing goods that are dutiable under the control of the
Government until the duties are paid; for instance, take a
vessel docking at pier 45 East river, and she has dutiable articles on
board; what becomes of them?

A. If there is a permit issued—that is, if they are regular goods, then there is a permit issued for the payment of the duty. Say that there were ten cases of goods. One case out of every ten is sent to the public store for examination by the appraiser, and the other nine are delivered to the merchant. That is, if their duty is paid before the delivery.

Q. Where the goods are entirely duty free, has the collector got anything to do with them; can he direct them to be sent to a bonded warehouse?

A. That I can't answer.

By counsel for defendants:

Q. I notice that these are signed "J. Segouin, storekeeper." Is he an employee of the Government?

A. Yes; he must have been at that time, and in the pay of the Government, of course. He is the storekeeper designated by the Treasury Department for watching over goods which have been ordered by the collector to the bonded warehouse. This shows that he has received those goods named in those receipts into his custody. All the goods that come into this port in ships are regarded as in the custody of the Government until either the duties are paid, or it is ascertained that there are no duties upon them. And that is the reason why they are sent, where there is no claim upon them, to the general-order storehouse.

By plaintiffs' counsel:

Q. Do you mean to say that they are still sent to a bonded warehouse if they are duty free; do you mean to say that it is the custom of the authorities, where goods are duty free and a person is trying to get his goods, to send them to a bonded warehouse?

A. Yes, sir; or on a general order. It makes no difference whether the goods are free or not. They have to make an entry all the same. By general orders I mean goods lying on the dock over 24 hours, that is unclaimed. 47

Q. But when they are claimed and duty free they are discharged right from the dock. Do you mean to say that they are put upon lighters and taken over to Robbin's reef or Baltic stores?

A. There is what is called a free entry made, and on that particular entry there is a permit issued to the inspector for the delivery of those goods.

By the Court:

Q. But without that permit they cannot get the goods?

A. No, sir.

Q. And without that permit, if they are on the dock 24 hours, they are sent to the warehouse?

A. Yes, sir.

Q. Do not those receipts indicate that the owner had presented no permit for the goods?

Objected to.

The Court: The fact that they were sent to the public stores indicates that the owner either had no permit or did not call and demand them, isn't that it?

The Witness: Yes, sir.

By plaintiff's counsel:

Q. It indicates that he didn't get them, at any rate?

A. He didn't get them.

JOSEPH H. RAYMOND, being duly sworn and examined as a witness on behalf of the plaintiffs, testified as follows:

Examined by plaintiffs' attorney: I live in Brooklyn, and during the period covered by this controversy I was the health commissioner of Brooklyn—from 1882 to 1886; I remember the month of June, 1885—some discussions that were had before me concerning the landing of rags in the city of Brooklyn.

Q. There has been introduced here a letter dated March 7, 1885,

addressed to the collector of this port by the Paper Stock
48 Disinfecting Company. Were you the local authority alluded to there who had the authority to prevent goods being landed at the Baltic stores?

A. I don't remember that letter, but I was the health commissioner of Brooklyn at that time, having jurisdiction over the Baltic stores.

Q. And what is stated in that letter is a fact, is it?

A. I don't remember, sir.

Plaintiffs' counsel reads the letter.

Q. Is what I have just read a statement of the Secretary of the Treasury to the effect that it had been represented to him by the Paper Stock Disinfecting Company that cargoes of infected rags were on their way to New York, and that the local authorities would not permit them to be landed at the Baltic stores for disinfection?

A. I don't know; I don't identify the cargo, nor the time, nor the circumstance at all.

Q. As a matter of fact, do you remember whether, during the entire year of 1885, you had made a rule, as health officer of Brooklyn, preventing the landing of any rags at the Baltic stores, which had been claimed to be infected?

A. I made a rule that no rags should be landed in Brooklyn at any stores, unless I had a statement from the health officer of the port that the rags were free from disease. I have a copy of that regulation here (witness hands paper to plaintiffs' counsel.) The rule was made on the 10th day of March, and was in force in June, 1885, when these goods came here. I enforced the rule.

The paper produced by witness is marked Plaintiffs' Exhibit P, April 20th, 1887, and is read.

The first rule is a certificate of the health officer of the port, on a blank supplied by this department for the purpose.

Q. You dont't say in this circular what that certificate was to contain.

49 A. I have a copy of it here (witness producing a paper, and handing to plaintiffs' attorney.) This paper was the blank that I insisted upon having, before permitting goods to be landed anywhere within my jurisdiction.

Paper last produced is marked Plaintiffs' Exhibit Q, April 20th, 1887.

The Witness: Sometimes that permit came in a modified form. I mean that sometimes there were interlineations on that form, made at quarantine, by the health officer or by his deputy. I remember one cargo which was sought to be landed at the Baltic stores, about which there was a discussion before me, which was participated in by Mr. McClintock on one side, and Mr. Bartlett on the other.

Q. Will you state precisely what the subject of that discussion was?

Objected to as improper evidence to bind the defendant singly, and also as hearsay; objection overruled; exception.

A. A lighter by the name of Success, commanded by Captain Cronk, came there. The captain applied for permission to discharge 850 bales of rags This was on the 13th of June, 1885.

Counsel for defendants: We object to it as immaterial and irrelevant.

The Court: What are the dates of those receipts which have been marked Defendants' Exhibits 9, 10, 11 and 12?

Plaintiffs' counsel: They don't state any date. It only says June. There is no evidence that the goods were landed before the 13th.

The Court: Well, I will allow it.

Defendants' counsel except.

50 Q. Do you know, as a matter of fact, from what ship those cagoes came?

A. Yes, sir; they were from the Vigilant. The captain applied to the health officer for permission to land at the Baltic stores, 850 bales of rags from his lighter, which rags he had taken from the ship Vigilant in New York. The application of the captain was opposed by Mr. McClintock on the ground that his firm was the owner of the rags and as such owners they were entitled to the permit and were entitled to say where the rags should be landed, and they objected to their being landed at the Baltic stores. I think Bartlett asked that the captain of the lighter have the permit to discharge them there. I told them it was purely a legal point which a doctor could not decide, and that I would adjourn the matter until the following morning, and at that time I would have my counsel there and have the matter decided then. The following morning the parties were present. My counsel was there. He heard the statement of both parties and he decided that the permit should be given to the captain of the lighter on the ground that the goods were under his charge, and that in a case which had just been decided before one of our justices where the captain had discharged rags without a permit, the court had held the captain responsible, although our counsel had endeavored to make the consignees responsible. He, therefore, held that the captain was the responsible party to have the permit and the permit was accordingly given to him.

Q. Now, before those goods were landed had you received from the health officer of the port his assurance that these were free from infection?

Counsel for defendant Bartlett: We object to it as not binding upon Mr. Bartlett.

Objection overruled. Exception.

A. I had received from the health officer of the port, which
51 was of the same general form as the one I show you there
(Q), which says the rags are not from a cholera-infected port.
I got from Dr. Smith a certificate that these rags were not from a

cholera-infected port. I am not positive whether I considered that sufficient to permit the goods to be landed. My impression is—and I may say here, that it is simply a strong impression, I have nothing to base it upon except my recollection—my recollection is that I happened to be at the office of the New York board of health about the time this matter was under discussion there, and that I then learned of the fact that the ship Vigilant had come to New York and a permit had been granted for the discharge of the rags there. I know that at the time I gave the permit I was thoroughly satisfied in my own mind that the rags were not infected.

Q. But you observe that under this circular you state that the evidence has got to come from the health officer. Now, I ask you did the evidence in this case, outside of the certificate that they were not from an infected port, come to you from the health officer?

Objected to.

The Court: Did you have any written communication from the health officer?

The Witness: Not that know of.

Q. Did you have any verbal communication from him?

A. I tell you I am not sure about that.

Q. What is your best recollection on the subject?

A. My memory on that point is so defective that I would not be positive. It would be simply an impression; I have no recollection about it except on the general principle which I adopted from the first.

Q. Base it upon the general principle that you adopted in dealing with these goods in Brooklyn; if upon that general 52 principle you have a recollection, you are entitled to state it.

A. As I say, I cannot state anything positive except my guiding principle of action throughout the whole matter.

Q. I will ask you for your guiding principle of action, then.

Objected to; objection sustained.

Cross-examination by counsel for defendants:

Q. Is it true that you ordered one vessel away from Brooklyn, either the Vigilant or Battaglia, forbidding permission to her to land her cargo there?

A. I have no recollection of the Battaglia. I knew nothing of the vessel, except possibly what I had known two years ago, and had forgotten until my memory was refreshed by a paper on file at the office of the board of health, which I saw yesterday morning.

Q. Now I ask you whether you didn't forbid the landing of the Battaglia's cargo at Brooklyn.

A. I don't remember.

Q. Will you kindly look at that paper and see if it refreshes your memory (handing paper to witness)?

A. No, sir; this does not.

Q. Look on the back of it, please.

A. (Witness looking at the back of the paper.) That is not my writing; I think it is the writing of my deputy; I don't remember the vessel at all.

The Court: The original is locked up in my room, but when my man comes here I will get it.

Plaintiffs' counsel: I can give you what that was from memory. It was: "It not appearing from this certificate that these rags are not free from infection, they cannot be landed." That is what appeared on the back of the other paper. I will admit that that refers to the Battaglia's cargo.

Q. It being admitted that such an order was made by you,
53 it follows that the Battaglia's cargo was refused admission
to Brooklyn?

A. Taking it for granted that there has been such action taken, why certainly.

By the Court:

Q. You have no doubt, looking at that indorsement in your deputy's handwriting, that permission to land that cargo was refused?

A. I have no doubt of it, sir.

Q. Does it not appear from the face of the paper now shown you, which is dated New York, June 17th, 1885, and signed by William M. Smith, health officer, that that was received at your office and indorsed by your deputy (handing a paper to witness)?

A. Yes, sir, that is what I should infer.

The paper is offered in evidence, and admitted and marked Defendants' Exhibit 13, April 20th, 1887.

The Court: Where does that paper come from?

Counsel for defendants: It comes from the board of health of New York. It was communicated from the Brooklyn board of health to the New York board of health as an official document.

Q. Doctor, how many years experience have you had in the study of medicine and its kindred subjects?

A. 20 years, and I have had a good deal of experience in sanitary matters, such as are connected with my duties as health commissioner of Brooklyn. I was in the health department 13 years.

Q. And I must ask you whether you are not considered an authority upon that subject?

A. You will have to ask others that.

Q. I have to ask you because you made it a special study.

A. Yes; I have made it a special study.

Q. What, in your opinion, is the danger of landing in
54 Brooklyn unopened and undisturbed bales of rags which
have come from an infected port and been subject to fumigation aboard the vessel?

A. I think there is danger of infection. I think there is danger of communicating disease, assuming that the rags are infected rags, fumigated on the outside simply.

Q. There is less danger, however, of landing rags in the condition to which I refer than there would be in opening the bales, assuming that they contain infection?

A. Certainly.

(By the Court:)

Q. In other words, you consider it unsafe to public health to allow rags to be landed which are brought from an infected port, or a port that then has an epidemic of contagious disease without proper disinfection by the opening of the bales?

A. Yes, I think it is unsafe to discharge rags which are infected, even although the exterior of the bale may have been disinfected by sulphur.

To counsel for defendant: In the years 1884 and 1885 there was considerable excitement in the public mind and among physicians as to the danger of bringing rags here from foreign ports. I was present at the conference held at the Fifth Avenue hotel on the 23d of April, 1885, consisting of the following officers of boards of health: Dr. Lindsay, of Connecticut; Dr. Stewart, of Maryland; Dr. Carroll, of New York State board of health; Dr. Smith, health officer of the port of New York; and I was there taking part in the matter by reason of my official position as health commissioner of Brooklyn. At that meeting a resolution was passed as follows: "That in view of danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at the place of departure or on their arrival here." Such a resolution was passed with your concurrence.

Q. Is it not true, so far as your judgment and experience
55 goes, that the rags which are gathered up and sent as articles of merchandise are derived from large, extensive territory, and not through the shipping ports through which they came to this country?

Objected to on the ground that the witness is not shown to have any knowledge on the subject.

The Court: Have you any personal knowledge on the subject?

The Witness: I have a knowledge from study, yes, sir. Of course I know nothing about the collection of rags personally from any other place than Brooklyn.

By defendants' counsel:

Q. Well, in Brooklyn; where are they obtained in Brooklyn?

Objected to; objection sustained; defendants' counsel excepts.

Q. May it not be true that while a seaport is free from infection, the surrounding district may be filled with it? I ask you the question from your experience as a physician.

A. Yes, sir. I know the process described in Plaintiffs' Exhibit F, as follows: "Disinfection in a bale by means of perforated screws or tubes through which sulphur, dioxide or superheated steam at a temperture of not less than 330 degrees, shall be forced at a pressure of four atmospheres for a period sufficient to insure thorough disinfection." In my judgment, that is a competent and proper method of securing disinfection of rags, if the temperature of all parts of the bale is 230.

Q. Is it true, as stated at this conference in which you took part, that if the rags are treated with superheated steam for not less than eight minutes and in such a manner as to be heated to or above 212 degrees Fahrenheit in every part, that that process is ample to destroy the bacteria?

56 A. If that temperature was 212, I don't consider it sufficient. 230 is sufficient. If the steam heat comes in contact with every portion of the rags, 230 degrees Fahrenheit is sufficient. The heat being moist steam, and maintained at that temperature for ten minutes, will destroy all forms of germ life. At one time I took part with Dr. Sternberg in testing the efficiency of this process of disinfecting rags. Dr. Sternberg is a surgeon in the United States Army, who has for years made bacteri*oo*logy a special study and is an authority in this country; there is no man, so far as I know, who is his superior. He is regarded as an authority upon that subject; he is the United States authority and he has a national reputation. He has also a reputation beyond national—a European reputation. I assisted him in making test No. 4 from the circular. It was at one of these stores in Brooklyn. My impression is at the Baltic stores, and I think the early part of 1885. My impression is that it was somewhere along about March; I think about the 1st of March. I do not remember whether my attention was called to the patent drawings under which this was done. I saw the machine there. I am not positive whether I saw the patent or not.

Mr. Cochran: I object to the testimony going any further, unless it is to be considered evidence-in-chief on the part of the defendants.

The Court: You have a right to claim that, of course, so far as this testimony is concerned.

Mr. Cochran. That is all I want.

Q. Did you see the drawings?

A. I don't recollect. I saw the machine.

I do not know any other place in Brooklyn or in the port of New York where that machine was in operation except the Baltic stores. I am not positive whether it was temporarily at one or the other stores, or not. I know of that machine being operated elsewhere; I saw it in Boston. I have seen rags put through the process

57 in use by this machine. I saw in company with Dr. Sternberg, and I have seen it besides that.

Q. Now, I will ask you what your opinion is, if the work of the machine is thoroughly carried out as stated in the citation from the Treasury Department circular, whether that is a sufficient disinfection of the rags which contain disease.

A. The latest experiments of the apparatus show that there were portions of that bale which did not reach 230 degrees Fahrenheit.

And in view of the fact that a temperature of 235 degrees—5 degrees above this—is considered requisite to destroy all germs, until I have seen other evidence I should say that at the present time my mind is in a position to doubt the efficacy of the process.

Q. Was it the opinion of yourself and Dr. Sternberger at this time that that was a sufficient method of disinfecting rags?

Objected to; objection sustained; defendants' counsel except.

Q. Was it your opinion at the time that this was a sufficient process for the disinfecting of rags, provided it was thoroughly operated?

A. It was.

Q. And did you communicate that to Dr. Smith?

A. We have had a great many conversations and I presume I did. I have no doubt of it. I did not disapprove it to Dr. Smith nor to Mr. Bartlett either. In other words, I really did approve of it. Whether I communicated that fact to them or not I don't know. I talked of it many times after the test. I know Dr. Sternberg's writing very well.

Q. Will you kindly identify that as being in his handwriting (handing a paper to witness)?

—. It is Dr. Sternberg's writing.

The paper referred to is marked Defendants' Exhibit 14 for identification.

Plaintiffs' counsel: If it be agreed here, as we understand
58 it to be the fact, that this letter was written after experiments
made, to superintend which Dr. Sternberg was paid by the disinfecting company, we will admit the letter.

Counsel for defendant Bartlett: I have no objection to that, and I will state that this letter was written by Dr. Sternberg after he had been called upon to superintend those experiments and had been paid therefor by the Paper Stock Disinfecting Company.

Plaintiffs' counsel: How much?

Counsel for defendant Bartlett: Well, I will stop. I never shall get an admission, I am afraid.

Q. In your judgment is this letter a correct statement: "Patho-generic baccillia which forms spores are killed by exposure to a temperature of 100 centigrammes, equal to 212 degrees Fahrenheit, maintained for 10 minutes"?

A. Yes, sir. Patho-generic baccillia are those which create disease, and those are the baccillia of which there is fear.

Counsel for plaintiffs: Have you not seen one of them, Doctor?

The Witness: Yes, sir. There is one point there about which there may be some confusion between the statement I made a few moments ago, that 230 degrees was required and now 212. The baccillia or the germs themselves are killed at a temperature of 212, but these germs form, many of them, spores, or seeds, so that the germs themselves may be destroyed at 212, while the seeds would require a temperature of 230, and from those seeds, if not exposed to that temperature, other germs may arise. The seeds are killed at 230 degrees. But the creatures themselves are killed at 212 degrees.

It was for that reason that we health authorities, in conference at
the Fifth Avenue hotel, adopted this 5th section of this paper which
I now read: "If this disinfection be done abroad, it be re-
59 quired that either rags be boiled for not less than 30 minutes
and dried before sailing, or treated with superheated steam
for not less than 8 minutes, and in such manner as to be heated to
or above 212 degrees Fahrenheit in every part."

I regard that as sufficient disinfection, and I will explain why: The conference to which reference has been made was particularly with reference to the exclusion of cholera. The cholera germ is killed at that temperature. Therefore, that temperature that refers to the exclusion of cholera would be sufficient. There was a particular apprehension in that year of cholera, that was the great fear. The health authorities here from the information they received were not able always to recognize the distance to which cholera had advanced in the eastern countries, or to know exactly its track. The evidence from the other side was very unreliable. There was not a health officer in the United States from the north to the south, or from the Atlantic to the Pacific that didn't expect cholera that summer. And they could not tell from what quarter it would come in the east. India is the home of cholera; it starts from India. It is, in general, in the east. As to Japan, my impression is that it was first imported there; I should not call Japan the home of it. But it was there; and that was the year in which cholera was in Italy and in Spain. Cholera was at first, I think, the only disease to be apprehended from imported old rags. As to my opinion in 1885, at about the time the Vigilant and the Battaglia arrived here, as to whether there was danger of small-pox and other diseases, I never doubted that small-pox could be communicated by rags.

Q. And were there dangers from rags on account of small-pox and the possibility of contagion from rags imported even though the port of shipment was not infected with cholera?

A. The question would come: Where the rags were gathered, there was the danger; never mind what port they came from.

60 By the Court:

Q. Was there information to your knowledge about that time that there was any cholera at that period, or for some time before, in Japan?

A. My recollection is that there was a great deal of it in Japan at that time.

Q. Cholera?

A. Yes, sir.

Counsel for defendants:

Q Did you not repeatedly, in the year 1885, and in the early spring, make the statement that for the safety of the people of New York and Brooklyn, all imported old rags should be disinfected before they were landed?

Objected to. Objection sustained. Defendant's counsel except.

Q. Was it your opinion at that time that such precaution was necessary for the protection of the health of the people in Brooklyn and New York?

A. I would hardly say for the protection of the people in Brooklyn and New York; but for the protection of the people in the United States, yes. That discrimination is made because the distribution of rags is generally outside of the cities of Brooklyn and New York. Rags are never allowed to be broken while in New York and Brooklyn. They are taken to the interior.

Q. But wherever they did go, you regarded it at that time as a necessary precaution that they should be disinfected.

A. I considered it very advisable. The action of the local health officers at the ports was in response to the demands of the west and interior towns.

Q. Was there any question at that time about the wise discretion of a health officer at a quarantine port to insist upon such precaution?

Objected to; objection sustained. Defendants' counsel except.

61 Q. In your opinion at that time was there any question of the necessary exercise or discretion, of a health officer at quarantine to require disinfection of imported old rags?

Same objection, ruling and exception.

Q. Isn't the rule to which you refer that permits would only be granted for the discharge in Brooklyn of rags which, in the judgment of the health officers, needed disinfection, the rule embodied in the circular which I now show you, of June 15th (handing a paper to witness)?

A. Yes, sir; a subsequent rule to the one I referred to before.

Objected to on the ground that it speaks for itself.

The Witness: At the time these rules were made the rags were being landed in Brooklyn and disinfected there at the time this rule was passed, the disinfecting apparatus had been removed from Brooklyn to Robbin's reef.

Q. By your order?

A. Yes, sir.

Paper offered in evidence. Marked Defendants' Exhibit 15, April 20th 1887, and read.

Q. Is this your letter in respect to the disinfection at Robbin's reef on the Battaglia (showing paper to witness)?

A. Yes, sir; that is my writing. I understand that Robbin's reef is in the quarantine jurisdiction. And it is a fact that the disinfection and lighterage for many years that was necessary for that quarantine jurisdiction, has been done at Robbin's reef. That letter was written to Dr. Smith.

Offered in evidence, and marked Defendants' Exhibit 16, April 20th, 1887.

Witness continuing: From January to June, 1885, I always understood that the discharge and disinfection of old rags was entirely under the Secretary of the Treasury.

62 —. Could the health officers of Brooklyn or New York interfere with that?

Objected to; objection sustained. Defendants' counsel except.

Q. Did you understand that, so long as the circular of December 22d, 1884, was in force, you, as health officer of Brooklyn, could permit the discharge of imported old rags without disinfection?

Same objection, ruling and exception.

Q. Had you, as health officer of Brooklyn, any control and power to direct the discharge and disinfection of imported old rags in Brooklyn, when they were under general orders of the custom-house and inspector on board, so long as the circular of December 22d, 1884, was in force?

The Court: That is a question of law. It is not for the health commissioner to decide what his powers were.

Counsel for defendants: But we are charged here with bad faith.

Counsel for plaintiffs: We claim upon this that the circular of December, 1884, was suspended by the circular of June 10th; that this was placed in the discretion of the health officer, and the order of the collector is stated to have been by the health officer's direction.

Counsel for defendants: That is not a fact about the Vigilant. The papers show that they were already sent by the custom-house authorities before the circular was in any way modified.

The Court: I will sustain the objection.

Defendants' counsel except.

Q. In the year 1885, did you exercise any authority as health commissioner of Brooklyn to permit the discharge of imported old rags which had not been disinfected pursuant to one of the four processes which had been stated in the circular of December 22, 1884? 63

A. The history of all the rags I don't know. I looked to but one party for evidence and that was the health officer; if he sent me a certificate that the rags were all right, I treated them just as I would any other cargo. I never questioned his certificate and I always had some evidence from the health officer; whether they were disinfected abroad or not was a question that, unless something special came up, I never went into.

Q. That answer, Doctor, I hardly think is responsive, and I, therefore, repeat the question?

A. I think it was responsive, because you asked me if I ever admitted rags that were not infected. I told you that as to the history of the rags I knew nothing. I have never admitted rags without a proper certificate from Dr. Smith.

Q. I will ask you then whether, in your opinion, in the year 1885, it was safe or prudent to admit the discharge of imported rags without the disinfection in the process mentioned in the circular of December 22, 1884?

Objected to.

The Court: I will sustain the objection as to the question in that form.

Defendants' counsel except.

Q. In June, 1885, was it your opinion that it was a prudent and safe course to admit the rags by the Vigilant and the Battaglia without disinfection?

A. As I said before in reference to the Battaglia, I don't remember anything about that vessel until I saw my writing on the back of that paper.

Q. She came from Leghorn and arrived on the 5th of June, while the Vigilant came from Japan?

A. The Vigilant I remember, because it came before me for hearing. All I know is what I saw on the back of that paper,
64 which shows that I took action and I had ground for it then;
but what that action was based upon I don't remember.

Q. Assuming that the vessel came from Leghorn and arrived here on the 5th of June, and the Vigilant came from Japan, was it a safe and prudent thing to do?

A. Yes; I considered it safe and prudent or else I never would have permitted them to be landed.

Q. Pardon me. I said to be landed without disinfection?

A. They were landed before they were disinfected.

Q. Was it your opinion that it was safe to open any of those bales without disinfection?

A. Yes. And now I would like to qualify that answer. When the question was first presented to me, as it was by the Assistant Secretary of the Treasury by a letter dated January 3, 1885, whether I would permit the landing and storage of rags at the Baltic stores in Brooklyn, I wrote him this letter: "In answer to your inquiry I have to say that such permission will be granted provided the rags are not infected. That evidence of such non-infection being the certificate of the health officer of the port," and I never permitted a pound of rags to be discharged in Brooklyn about which I was not satisfied from the evidence in my possession that they were not infected either outside or inside, and if I had the least doubt about any bale of rags, no matter what its external condition was, if I didn't believe that the evidence I had in my possession was such as to show that the interior of these rags was not free from contagion, in the opinion of the health officer of the port, they never would have received a permit from me to be discharged in Brooklyn. That was my course from the beginning, and every one understood it.

Q. The question related to the rags by the Vigilant, is that statement that you now make that it would have been safe to open the
rags of the Vigilant, consistent with these two that I read
65 you from your conclusions at the conference? (Reading.)

In view of their contagion, all rags imported to this country should be disinfected either at the place of departure or on arrival here; that if such disinfection be done abroad it is required that either the rags be boiled for not less than 30 minutes and dried before bailing, or treated with superheated steam for not less than eight minutes, and in such a manner as to be heated in not less than 212 degrees Fahrenheit?

A. Yes; I think they are perfectly consistent. In the first place, the question of rags, their danger and the necessity for disinfection, was, in the latter part of 1884, after that convention which was held at Washington on December 10th, for the first time discussed widely in this country. Individual men had their ideas. Some believed it was necessary to disinfect. Others opposed it, thought it was unnecessary. And during the whole of the year 1885 evidence was gradually being accumulated on one side and the other in reference to the danger of contagion from rags. So that the year 1885, with reference to the disinfection of rags, was an epoch in rag importation in reference to the question of their contagion. Inasmuch as the people in the West, particularly the Michigan State board of health, represented by Dr. Baker, and those connected with the paper mills in the interior, were afraid of contagion, it was deemed advisable that rags should then be thoroughly disinfected. This was about the time that the convention met to which you have just referred, at the Fifth Avenue hotel, April 23, 1885, which was almost entirely with reference to cholera. The question came up incidentally in reference to other diseases, and my recollection is that, although we believed that as to small-pox, which we have all known for a long time, scarlet fever and dip-theria, the idea that they can be developed by rags in this way, is comparatively modern—has not been developed until within a very recent period.

66 Now, in reference to the disinfection of these rags my action as health officer in charge of the people of Brooklyn, and my recommendations were not always upon the same action. In the first place I had something else to do as health officer of Brooklyn besides simply excluding contagion. The people of Brooklyn had to be satisfied that what I was doing was prudent. I could not discuss questions of policy with them, and as a result of this agitation about rags came the order to move the disinfection barge to Robbin's reef. That was the result of it. Not because I believed that the rags were dangerous necessarily, but because it was in the middle of the summer, and cholera was anticipated by almost every steamer, and as a matter of prudence that was done. This rag question had taken up so much time and the people were so uneasy about it that I said the barge must go away from Brooklyn, and the first vessel to be disinfected below was the vessel you have spoken of, I think, which brings it to my mind, the Battaglia.

Q. I had intended to confine my question to the time of the arrival of these vessels and not to your subsequent opinion?

A. The point you asked me was: Would I, as health officer, have permitted those rags to be landed? Now, as matter of fact, I say yes. There were ten or twelve bales which were very offensive, and

which I understood from the foreman the men objected to handling. Those rags, I think, came from the Vigilant. They were subsequently opened and they were disinfected. After that discovery I made an order dated June 22, 1885, that because they were offensive they should be removed from the city of Brooklyn, but they were not, because there was no place to take them to, and those rags were subsequently opened and examined by one of the inspectors. I was present and I handled the rags myself. We thought at one time there was probably a dead Japanese baby inside, or probably
dead rats. But the rags were not removed. They remained
67 there until the offensive oder all disappeared. These were
bales from the Vigilant. I myself made inquiry and made
a report on this subject to the effect that 19 boards of health replied that they had known of 71 cases of small-pox, 24 epidemics of that disease, one case of cholera, and two epidemics of scarlet fever from rags. I believe that statement to be true; I do, indeed. In August, 1885, I expressed an opinion that all cargoes from suspicious ports should be discharged at quarantine.

Q. You spoke of an examination of this process, owned by the Paper Stock Disinfecting Company. Who was present at that examination—I mean Dr. Sternberg's experiment?

A. Dr. Smith was there, Dr. Sternberg and Mr. Bartlett. I do not think Collector Robertson was there—not the collector himself. Mr. French was there, the Assistant Secretary of the Treasury then. Mr. Taylor was there or Dr. Babbitt, I am not sure which—one of the members of the Boston board of health. It was a good collection of scientists. There were some 12 or 15 persons there, probably. That test resulted in such a manner as to satisfy me of its efficiency. I remember a petition, of which I hold a copy in my hand, addressed to Dr. Smith, health officer of the port of New York, signed by substantially every physician in New York and Brooklyn, in regard to the importance of a rigid enforcement of the rules of quarantine in reference to the importation and disinfection of old rags. I remember seeing it in the papers.

Redirect examination by plaintiffs' counsel:

Q. There was a paper read in which your attention was called to a number of cases of disease that had occurred from an importation of rags. Have you ever seen that paper before (handing paper to witness)?

A. Not to my knowledge; no, sir.

Q. That was a report you had made?

A. Yes, sir.

68 Q. How did you come to write that?

A. It was about the time the rag question was coming up, and I wanted to get information. There was no information available in reference to the danger of infection from rags which I considered reliable. There were some articles scattered here and there throughout the country in medical journals. So I drew up a circular, which I sent to every board of health in Europe and in the

United States, and to all the paper mills in the United States and Europe.

Q. And in answer to those circulars you discovered but one case of cholera?

Objected to; objection overruled; defendants' counsel except.

A. Yes. Portions of the inquiry brought out one case of cholera from rags.

Q. So that there may be no misunderstanding about it; what do you mean by that portion?

A. I mean by that, that in addition to the evidence that I accumulated from those communications I had other evidence in my possession.

Q. In addition, you say, to all those circulars which you sent to every part of the world, you had instituted other inquiries, and the result of all of the discoveries that you made, was but one case of cholera?

A. No; I didn't say that.

Q. Correct me, then?

A. There is abundant other evidence of cholera from rags.

Q. What do you mean then by stating there that you had discovered one case of cholera?

A. I mean as a result of my own personal inquiries, aside from evidence that came from other sources and which was gained by other health officers and individuals, besides all that, I obtained evidence of one case of cholera.

Q. In what does that differ from what I said?

A. Because you said that from the inquiry I made and all other evidence there was only one case.

69 Q. I don't mean books and reports. I mean from the evidence that you personally collected, did you discover more than one case?

A. Oh, yes.

Q. Why did you limit your discovery to one case there?

A. Because, if you had seen the original report—that is, simply an extract from a report of mine—the original report is here in this book. I am a member of a committee on disinfection of rags, and before that committee we had evidence of one kind and another, and from all that evidence which we gathered we incorporated in this book, which his honor now holds and that contains my evidence, plus the evidence of a great many other investigators. And that includes a great many other cases of cholera.

Q. I am asking you for your investigations minus the evidence of all these other investigators?

A. Whatever they knew is in a different shape than it was before.

Q. You say in this circular——

A. (Interrupting.) Excuse me. I had nothing to do with that circular.

A. Well, that circular quotes you as having done something?

A. Here is the original report (witness indicating a book).

Q. In this paper you seem to state that in reply to your inquiry nineteen boards of health replied that they had known one case of cholera. Now, do you mean to say that there was more than one case of cholera reported to you in answer to your specific inquiries?

A. No, sir.

Q. Where was that one case of cholera?

A. I don't remember.

Q. Was it in this country?

A. I couldn't tell.

Q. Was it in Europe?

A. I couldn't tell you.

Q. Wouldn't it have an important effect upon you in the conclusions you had reached whether that case occurred in this country, or in another city where it might have sprung from rags, or from some other cause?

70 A. The report that I got was a report which carried to me the conviction that it sprung from rags because my inquiry was directed at rags. I don't know whether that case was in this country or somewhere else, and in reaching the conclusion that this case had come from rags, I accepted the theory of the doctor who had investigated the case personally. As a matter of fact there is a wide difference of opinion among medical men as to what causes cholera.

Q. Are there not some very respectable authorities—not to say eminent—that deny the possibility of cholera being communicated by rags at all?

A. No, sir.

Q. Do you know what Dr. Koch says upon that subject?

A. Yes, sir.

Q. Has he said anything about it?

Counsel for defendants: I object to this, and I make my objection for the purpose of giving me an opportunity to follow up this subject myself at the proper time.

A. My impression is that the sanitary conference which met at Rome, represented by Dr. Sternberg from this country, and by Dr. Koch from Germany, passed a resolution requiring the disinfection of rags on that very ground. That was the international conference at Rome. I remember the Berlin conference.

Q. Do you remember the following statement made by Dr. Koch: "Experience is in favor of the view that the infectious matter of cholera cannot be introduced in a dry state, for we know that hitherto cholera has not come hither by means of goods sent from India. * * * If the origin of the separate epidemic be carefully looked into it would be found that cholera has never reached us except through human beings themselves." Do you recollect that at any time in the course of your studies, or reading, having come across a statement of that kind made by Dr. Koch?

71 A. Yes, sir; I remember the fact, and I think if Dr. Koch was here and if you would ask him what he meant——

Q. (Interposing.) No, no. I ask you if you remember that.

A. Yes, sir.

By the Court: And that was in 1884?

A. Yes, sir.

Q. And when was the conference in Rome?

A. 1885.

By plaintiffs' counsel:

Q. (Reading.) "This question of the possibility of infection through rags was discussed in the cholera conference in Vienna and Constantinople, and nobody was able to furnish an instance of the spread of the disease by these means. The rags may be thoroughly dried before being packed. But it seems to me to be of little use to prevent the importation of rags if human intercourse was to be allowed. The danger of the introduction of cholera through comparatively healthy individuals, a danger which cannot be guarded against, is far greater than that of transmitting the disease by rags." Is it your opinion that cholera is, in the language of Dr. Koch, communicated by human beings themselves rather than in rags?

A. A case of cholera broke out in Dr. Koch's own laboratory from garments which were being experimented upon by one of his own students, garments brought there from India or from Italy, and not from a human being at all. I think that student was an American, too, but that is a matter of history.

Q. Did he modify the views that he there expressed?

A. I don't think you interpret Dr. Koch right.

Q. I read him. I don't interpret him.

A. He is subject to two interpretations.

By the Court:

Q. Has Dr. Koch by any writing or communication modified the language which I have read to you now, to your knowledge?

A. Yes, I think he has.

72 Q. Why do you think so?

A. For this reason: The very case which I referred to now was contracted in his laboratory. It was reported by Koch himself, and the statement which you, Mr. Cochran, make there as his opinion, in 1884, would be diametrically opposed to his own report made in 1885. Therefore, I think I am justified in saying that he has changed his opinion.

Q. Have you got that report?

A. I can get the report for you, I think.

Q. Do you say that in this report he declared that the danger was from rags——

A. You can notice that in the part you read nothing was said about rags; the word "rags" doesn't occur in the paragraph you read.

Q. (Reading.) "This question of the possibility of infection through rags"——

A. Is that Koch's language?

Q. So I understand it. This is taken as a translation of his statement at the Berlin conference in 1884 by the New York Medical Record.

Counsel for defendants: The objection to that is that my friend furnishes no proof of it. The doctor questions it.

The Court: Go on; I will allow it.

Defendants' counsel except.

Q. Now, I am asking you whether Dr. Koch has at any time modified the opinion expressed there.

A. Yes, sir; in my opinion, he has.

Q. As to rags?

A. As a result of information which was presented at the international sanitary conference at Rome, which was held about twelve months subsequent to the one in Berlin, and which was attended by Dr. Sternberg, evidence has been accumulated, and there is an abundance of it in reference to cholera having been communicated by rags, and as the result of that, the international sanitary conference passed a resolution recommending the disinfection of rags by steam heat.

73 Q. Would you be governed by Dr. Koch's opinion on that subject as expressed in 1886?

A. If he said no, I should not be governed by it, because I consider I am able to sift the evidence as well as Dr. Koch is. If men in whom I have confidence told me that they knew of cases of cholera which they had investigated as health officers, contracted by rags, I should accept their statement and consider myself just as competent to pass upon the evidence as Dr. Koch, who is a bacteri*a*ol*i*gist, and is not a health officer, and I doubt if, as a health officer, he has ever had any practical experience in the sanitation of communities.

Q. Did you ever have a case of cholera?

A. I have seen it; I never had in my practice.

Q. Have you ever seen a case of cholera from rags?

A. Personally; no, sir.

Q. How long were you health officer?

A. I was health commissioner for four years, but I was connected with the department for 13 years.

Q. During the 13 years had you ever any evidence of cholera being disseminated by rags?

A. There never was any cholera in Brooklyn during my connection with the department, although rags were being landed there all the time, which were not disinfected.

Q. The disinfection business began when this company started?

A. I don't remember anything about the company; it began after the meeting of the conference in Washington of States boards of health and local health officers.

Q. I understand you to say that you would not be governed by Dr. Koch's opinion if it conflicted with your own; is that it?

A. If he said that rags could not convey cholera I would still continue to hold that they could, and there would be just a difference of opinion between us.

Q. But you do recognize him as an eminent authority?

A. On some points.

Q. What is a bacteri*a*ologist?

A. A bacteri*a*ologist is a man who spends his life in his
74 best efforts to investigating germs of bacteria, many of which
cause disease in human beings and in animals, and in other
forms—that low form of plant life—a microscopic form of life.

Q. As a matter of fact those particular rags weren't in particular dangerous to Brooklyn, in bulk or broken?

A. I was satisfied from evidence which I had that they were not infected and not dangerous, and that evidence came from the health officer of the port; yes, sir.

Q. During 1885, when all of this discussion was going on, are you not aware that rags were taken and shipped to the amount of 20,000 bales, reshipped from New York to Portland and Perth Amboy, without any disinfection, and without any consequent danger to the health of the communities?

Objected to as not within the witness's knowledge; also as irrelevant and immaterial.

Objection overruled; defendants' counsel except.

A. I didn't see the rags go.

Q. Now, there was some talk about some of the bales being offensive, and they were opened, and I think you said there was some suspicion of there being a germ of Japanese life there in the shape of a baby; what was the matter with those rags?

A. I don't know.

Q. Was it anything more than damp?

A. Afterwards we decided that that probably was what it was.

Q. You pulled the rags apart, and as they dried everything about them disappeared?

A. I am not positive about that; I know we examined them very carefully and found no baby or rats; we thought they were rats;
it smelt like decomposed flesh.

75 Q. There was some question about the character of the
endorsements. Look at those and see if they passed through
your hands (handing Plaintiffs' Exhibits B and I, to witness)?

A. This is my endorsement on Exhibit I.

Q. You observe that that is a little turn; read it aloud, so that the stenographer can take it down.

A. (Reading.) "Inasmuch as there is no evidence that these rags are not infected, they cannot be discharged in Brooklyn until they bring the usual certificate from the health officer." That endorsement was made upon the statement that is contained in what might be called the front of the document. After reading this, that was my position in the matter. Now, in the other case, Dr. Smith's statement, there is, that they were not from an infected port.

Q. Was that all the evidence that you had from the health officer as to the condition of those rags, when you granted the permit to land them?

A. On that, I am not sure. This was the subject of our discussion this morning.

Q. From your general course of business, and from the rule you invariably followed, would you permit them to land?

A. No, sir; not without other evidence. I would not have landed them on that.

Q. When you established your rules for the exclusion of rags that did affect the general health of Brooklyn, did you confine your regulations to the infection of cholera, or did your regulations cover all kinds of infection?

A. At the time the rule was first made cholera was uppermost in everybody's mind. That was way back in January. At the time the rule was made, I don't think there would ever have been a rule established but for the presence of cholera.

Q. Then, the movements of the quarantine officers, the subject discussed between them, was the means to be taken in order to exclude cholera?

A. Well, incidentally, other diseases came in, because the evidence was gradually accumulating.

76 Q. You were asked some questions as to what you saw in this test that was made of this machine that was used in the Bartlett's stores for disinfection. I understood you to say, that at the test which you saw, you considered it was not successful; that it was a failure; that it didn't bring all the rags up to that degree of heat which you considered essential?

A. You are wrong. I was asked if I considered the process was a satisfactory one. I said, that in view of comparatively recent tests, I was not satisfied. I was also asked my opinion as to Dr. Sternberg's test, and I said, that at that time I considered it to be satisfactory. Don't misunderstand me to say that I now don't think the first test was satisfactory, because I do.

Q. I did not ask you that. I asked you to describe what you said about the test that you didn't consider satisfactory.

A. That was the last test made in November.

Q. In order to reach a conclusion as to what quarantine regulations ought to be adopted for the preservation of health, did you investigate what precautions had been taken in other countries upon them?

Objected to as immaterial. Objection overruled. Defendants' counsel except.

A. Yes, sir. I have known of a regulation of this character in Boston, and I think there was a regulation in France in 1879. I can't say that I knew of any regulation anywhere in the world at the time this was made.

I am well acquainted with the parties to this action.

There is no relationship between us, except that Mr. Bartlett's wife is a cousin of mine. I am well acquainted with Dr. Smith.

Q. And you are not testifying here from any particular friendliness to us?

A. Not at all.

By counsel for defendants:

77 Q. Neither are you testifying from any particular friendliness to us, are you, Doctor?

A. I testify because I have been subpœnaed by the plaintiffs.

Q. I understand you to say that there is abundant evidence to justify your opinion that cholera can be propogated by rags, and that other contagious diseases are frequently propogated by the same matter?

A. Yes, sir.

Q. Is it not true that special pains have been taken in the port of New York since the time you have been connected with the health office, viz., 1875, to carefully guard this port against infection by the importation of articles coming from all ports?

A. The port of New York is the port in the United States of America which is looked upon by sanitarians as the best protected. That results from the character of the health officer of the port.

Q. Something has been said about an experiment made in November, at which you were present; what November was that?

A. November, 1886.

Q. You said before recess that in your judgment there was no danger from opening of certain rags at this port. Did I understand you correctly?

A. Opening of the bales of rags which were discharged on my permit at the Baltic stores; yes, sir.

Q. Did you then in that case, in accordance with your usual custom, exact a bond conditioned that the rags should not be opened in Brooklyn?

A. I presume so. That is done in all cases.

Q. And so was done in this case?

A. I have not looked that point up, but I have no doubt of it.

Q. And you do remember that you failed to exact it in the case of the Vigilant?

A. No; I think I did.

Q. In your judgment it was for the best interests of the citizens of Brooklyn and New York that those rags should not be opened in Brooklyn?

Objected to; objection sustained; defendants' counsel except.

78 Emory W. McClintock recalled.

By counsel for defendants:

Q. Can you tell the jury what amount of rags were imported into the port of New York in the year 1885?

A. I think about 175,000 bales. Of that number we imported in the year 1885, I presume, about 12,000 bales. And in the year 1886 there were imported I should say about the same number.

Q. Before the circular of December 22, 1884, was issued by the

Treasury Department, was a copy sent to your firm, like that which I now produce, with a notice at the head (handing a paper to witness)?

A. I think so.

Offered in evidence. Marked, Defendants' Exhibit 17, April 20, 1887, and read.

Q. Did you send any communication to the department upon that subject?

A. I don't recollect that we sent any communication.

Q. And do I understand whether or not the circular which follows in Exhibit 17 is the same circular which has already been read in evidence?

A. There were some slight changes, I think.

Q. Have you been in Holyoke, Massachusetts, recently?

A. Yes, sir; at the paper mills there.

Q. Did you cause a telegram to be sent to one of the New York papers in regard to a case of small-pox that broke out in the paper mills caused from rags?

Objected to; objection sustained; defendants' counsel except.

Q. Have you the bills rendered to you for the disinfection of the cargo of the Vigilant?

A. Yes, sir.

Q. Will you kindly produce the first bill that was sent to you?

A. I haven't any bills except one.

Q. I speak of the bill rendered to you by the Paper Stock Disinfecting Company?

A. I never saw it.

79 Q. You have heard of it, haven't you?

A. Not to my recollection.

Q. Will you swear that they did not send you a bill?

A. I can't swear to that.

Q. You knew that the Paper Stock Company was disinfecting these rags, did you not?

A. No; I know they didn't.

Q. Will you now swear that they claimed to have disinfected these rags?

A. The only knowledge I have of that is a bill from Mr. Bartlett.

Q. Didn't you receive a bill from the Paper Stock Disinfecting Company?

A. Not that I recollect.

Q. Wasn't any claim made against you by the Paper Stock Disinfecting Company?

A. Not that I recollect.

Q. Will you swear there was none?

A. I swear I don't recollect any.

Q. Will you swear that there was none?

A. I can't recollect that there was.

Q. When the bill, Plaintiffs' Exhibit K, was settled by you, an allowance of $750 was made to you, wasn't there?

A. I believe so.

Q. Why was that allowance made?

A. I don't know. I did not ask.

Q. Then it was voluntarily taken off by whoever settled this bill with you, without any request on your part?

A. I made no request about it personally. I don't think I am the one that settled the bill. I think it was my partner Mr. Lockwood. We commenced a suit in Brooklyn, to which our counsel has referred, for an injunction. The papers now shown me are, I presume, the original complaint and summons in that action, and the affidavit of William Lockwood and the affidavit of Conrad Breaker, Jr., and also the injunction order issued by Judge Pratt.

The papers are offered in evidence and marked as one exhibit, Defendants' Exhibit 18, April 20, 1887.

80 I knew at the time of the commencement of that action that it was to be commenced, and advised with my counsel and my partner in regard to it. I don't think I know of the allegations contained in those papers. I don't recollect whether I was present at our lawyer's office while they were being drawn. These were issued on behalf of our firm. Our firm retained Sidney V. Lowell, of Brooklyn, to bring this proceeding.

Counsel for defendants: I will read these papers (reading the same).

There was a motion made by the defendants to dissolve that injunction, and I think injunction vacated by Judge Pratt.

Q. Upon motion to dissolve the injunction, did your counsel produce certain affidavits, and among others an affidavit from you (handing paper to witness)?

A. I don't know.

Plaintiffs' counsel: We will admit that that paper has his signature to it.

Counsel for defendants: I offer this paper in evidence.

Marked Defendants' Exhibits 19, April 20th, 1887, and read.

The Court: When was that action commenced?

Counsel for defendants: On the 15th of June, 1885.

Now, if your honor please, I read a paper which is attached to Mr. McClintock's affidavit from the Treasury Department, dated June 13th, 1885:

"Hon. George S. Boutwell, Washington, D. C.

"SIR: I am in receipt of your note of this date, with its enclosure further concerning the rags imported into New York, per 81 Vigilant, and state in reply that I must decline to take any further action in the matter. The determination of the question as to whether the rags should be disinfected or not rests with the health officers, and in this respect the case is covered by the provisions of the circular of the 10th inst. The enclosure is returned.

"Very respectfully, C. S. FAIRCHILD,
"*Assistant Secretary.*"

I also read a paper as follows:

"DEPARTMENT OF HEALTH, BROOKLYN.

"Date, June 11th; name of ship, Vigilant; cargo, 5,721 bales rags; from Japan; to be discharged on lighters at Baltic stores.

"The above is a true copy of a permit given to land rags."

I now put in evidence the opinion of Judge Pratt.

Marked Defendants' Exhibit 20, April 20th, 1887.

Q. What became of that injunction suit?

A. It was discontinued, I think.

Q. Was it discontinued?

A. I don't know whether it was or not. We subsequently commenced a replevin suit for the Vigilant's goods through Messrs. Kelly & Macrae, our attorneys.

Q. Did you also discontinue that suit?

The Court: When was that commenced?

Counsel for defendants: July 3, 1885, and the order of discontinuance was made in September, 1885. The parties were Bartlett and others; Dr. Smith was not a party.

A. When a ship arrives in the port of New York with cargo, I knew the fact that she has got to get from the collector of the port a permit to discharge, and I knew that where goods were
82 dutiable and the duty is not paid upon them, or goods which are not claimed, they are sent under general orders to a bonded warehouse.

Q. Do you know the fact that the Baltic stores where these rags were sent, is a bonded warehouse?

A. An improperly bonded warehouse.

Q. Why do you say that?

A. Because it has goods in it of domestic production that didn't arrive from abroad.

Q. But it is a bonded warehouse all the same?

A. No; you cannot have a bonded warehouse and have such goods in it.

By the Court:

Q. But it is a bonded warehouse, isn't it?

A. Yes, sir.

By defendants' counsel:

Q. You cannot take your goods from a ship until you have a permit from the custom-house, can you?

A. No, sir; and that is true of these rags.

Q. Will you tell me when you received the permit for your goods?

A. I can't recollect.

Q. Did you ever get a permit?

A. Oh, yes; two of them.

Q. Can't you tell what dates those permits were?

A. No, sir.

Q. Are they in evidence?

A. I don't know.

Q. Will you produce the permit?

A. You have to give up the permit if you get the goods.

Q. You don't know what date that was?

A. No; I do not.

Q. The ship arrived on the 30th of May?

A. I think we got the permit for those some time in June or July.

Q. Can't you be a little more specific than that?

A. No; really I can't, because that was an unusual thing.

Q. Didn't you get it in June?

A. I don't know; I shouldn't be surprised if we did; we had it July 3. I don't say just before that. We had it before.

Q. You got it for the purpose of commencing that suit, didn't you?

A. No, I don't think we did.

Q. You knew that you couldn't commence this replevin suit until you got that permit, didn't you?

83 A. I don't know that I knew anything about it. I should suppose so, though.

Q. Weren't you so instructed by your counsel?

A. Very likely.

Q. Isn't it true that that permit was got just before the commencement of that replevin suit?

A. I know that we had it before that.

Q. Referring to the condition of the bales of rags, you said that you examined them?

A. Some of them. I don't know; I should say between 600 and 700 bales. I personally examined some of them on the wharf where they were shipped; some at our store; some on the trucks, and I think some on a lighter.

Q. And you say that 20 per cent. of those that you examined, did not show any sign of having been disinfected by the Paper Stock Disinfecting Company's process?

A. No; 80 per cent.; the other 20 per cent. did.

Q. Then, in your judgment, the disinfecting process had not been used upon 80 per cent.?

A. I know it had not.

Q. Then only 20 per cent. of your loss, I take it, resulted from the disenfecting process?

A. Oh, we didn't *loose* anything from the rags being disinfected. They didn't hurt the rags any.

Q. Then, you don't claim that any damage resulted to the rags from the process used upon them?

A. No, sir; we do not.

Q. You do not?

A. No, sir; not to the rags themselves.

Q. Do you know where this ship first landed?

A. Pier 45 East river. And then she hauled to the Union stores, Brooklyn, where the cargo of rags was discharged. I think at the Union stores, not the Baltic stores, but very near there. I believe they were lightered from the ship around the Baltic stores. I was so informed. I don't know the names of the lighters. I do not know who owned them.

84 Q. All you know about it is what you said Mr. Bartlett told you?

A. No; that is not all.

Q. Do you know the names of the lighters?

A. No, sir.

Q. How many were there?

A. I don't know.

Q. How many trips did each one make?

A. I haven't an idea.

Q. Do you know the agent of the lighters?

A. I think so.

Q. Who do you think it is?

A. A gentleman named Case. I am not positive, but I think so.

Q. Wasn't the name of one of those lighters the Oregon?

A. No, sir.

Q. Do you know of what Mr. Case was agent?

A. The New Jersey Lighterage Company.

Q. Then, were not you informed that the New Jersey Lighterage Company owned the lighters?

A. Nobody informed me so.

Q. Then what did you mean by your answer a moment ago that Mr. Case was agent of the New Jersey Lighterage Company?

A. I understand he was.

Q. Didn't you understand that these lighters were only chartered to the New Jersey Lighterage Company, at the time these goods were moved, and that the New Jersey Lighterage Company was doing the lighterage of these goods?

A. Yes; I did at some stage, but I don't know exactly at what stage of it. I have had a good deal of experience in the history of rags, and I have been engaged in that business a good many years.

Q. Don't you know it to be a fact that rags are gathered in Japan, for instance, from all over the country adjacent to the seaport from which they are shipped?

A. No, sir; I do not.

Q. You have reason to believe that, haven't you?

A. I haven't; I have reason to believe otherwise.

Q. You believe that the rags that are shipped from a seaport, either in Japan or elsewhere, are all gathered from the immediate vicinity of the seaport do you? 85

A. In its vicinity; you asked me all over Japan before.

Q. I said all over about the port of shipment; you don't mean to say that the rags are gathered in the district which is confined to the port of shipment?

A. No, sir.

Q. But that they come from the surrounding country, either more or less distances?

A. Yes, sir; rather less than more.

Q. And is the same true of rags shipped from Italy?

A. Well, such Italian rags as I handle come principally from the Province of Tuscany; that is the province in which Leghorn is situated.

Redirect examination by plaintiffs' counsel:

Q. In answer to a question of counsel on the other side, as to what you based the allegation in the complaint on in the suit brought in Brooklyn, when you were asked to state the grounds of your belief that Dr. Smith had corruptly and willfully acted in connection with the Bartletts and the Paper Stock Disinfecting Company, you stated that that was to some extent based upon his conduct in relation to the Exile and the Lucy Nichols. Did you make such a statement yesterday?

A. I did.

Q. You stated in your examination yesterday that your accusation against Dr. Smith in this suit, was based upon the fact that you were compelled to send the cargo of the Lucy Nichols to Philadelphia, and that it was locked up there for some months, and that Bartlett followed you to Philadelphia.

Objection. Objection overruled. Exception.

A. We sent rags out of her to Philadelphia to save them from going through Mr. Bartlett's process here, as ordered by Dr. Smith.

Q. You stated that Bartlett followed you to Philadelphia. Now state what you meant by that?

86 A. When we got them to Philadelphia they were passed by the port physician; for the board of health of Philadelphia.

Defendants' counsel moves to strike out the answer.

Motion denied. Defendants' counsel excepts.

The Witness: The board of health of Philadelphia which was the executive body there, refused to allow them to land, on account of notice that they had had from the health officer of New York. We went on for a hearing, and I tried to get the rags into store, and I finally got them to allow me to take them off the schooner which carried them over there, and put them in store. Then Mr. Bartlett came on and said they were infected, that the health officer of New York would not pass them, and said they ought to be disinfected. We had a number of hearings, when Mr. Bartlett was present; I trying to get those rags released from the storehouse.

Q. What did Mr. Bartlett do about the Battaglia?

A. She landed by the marble yard, over on the East river.

Q. Where is that?

A. Near Grand street. Dr. Smith ordering them to be disinfected. They were not returned to the lighter, but were given to the New Jersey Lighterage Company's lighter, taken up by them and deposited in Mr. Harbeck's free stores. The rags were afterwards——

Counsel for defendants: Did you see them deposited in Harbeck's stores?

The Witness: I did. They were held until the charges were paid, and then they were delivered to us on the payment of the charges, without the production of any custom-house permit, for that permit is now in our possession, up to this minute. I saw this process of disinfection carried on.

87 Q. You described it yesterday as being the driving of a screw through a bale of rags; the screw being hollow, and steam forced through the bale?

A. Supposed to be, yes, sir.

Q. Well, that is the theory of it?

A. Yes, sir.

Q. As a matter of fact, in practice, there was no such heat generated, I suppose?

A. Not in my judgment.

Q. Now, in order to ask you the question directly, do you know what it costs to disinfect a bale of rags—what the actual cost to these parties is?

A. No, sir.

Q. Do you know about what it would cost?

Objected to; objection sustained.

Plaintiffs' counsel: I will ask Mr. Goodrich how much it has cost the disinfecting company to disinfect these rags?

Counsel for defendant Bartlett: It has cost them $4.37 for every ton which they have disinfected.

Q. I understand that after your goods were seized and brought over to those stores, you brought an action, in the first place, by injunction?

Counsel for defendants: We object to the use of the word "seized," and we object to the question as not being in conformity either with the fact or the law.

Objection overruled and defendants' counsel excepts.

Q. After your goods were taken and kept away from you, you brought an action in Brooklyn, by injunction, against the collector of the port and the Paper Stock Disinfecting Company?

A. Yes, sir.

Q. Now, when you made those parties to that action, were you aware that the whole question as to whether the goods should be disinfected or not had been referred to the health officer by
88 the Secretary of the Treasury, and the collector of the port directed to follow his instructions?

Objected to; objection overruled; defendants' counsel excepts.

A. That depends on the date. I knew on the 6th of June or the 5th that it had been referred to Dr. Smith.

Q. This is on the 15th of June. Now, at that time, you did know?

A. I think we did.

Q. That the health officer had a hand in it?

A. Yes, sir.

Q. And that it was on the health officer's action that the collector had ordered these goods to be taken?

Counsel for plaintiff: I want the letter of the collector to the Secretary of the Treasury to the effect that he has submitted the matter to Dr. Smith and is governed by his conclusions.

By the Court:

Q. You knew of that letter before you commenced that replevin suit?

A. Yes, sir.

Counsel for defendants: Here it is. It is dated June 17 (handing paper to Mr. Cochran.)

By plaintiffs' counsel:

Q. At any rate, whoever you made parties to this action, you made them parties on the advice of counsel?

Objected to as immaterial.

The Court: If you wish to draw any inference as against the plaintiffs, on account of the commencement of that action, why I think it is competent for the witness to explain the circumstances under which that action was taken. I will overrule the objection.

Defendants' counsel excepts.

A. We were.

89 Q. When those goods were finally delivered up to you, did any proportion of them go to Philadelphia?

A. Yes, sir; into the custody of Hamilton & Sons. Mr. Hamilton is here now. 700 bales, I think, went to Mr. Hamilton.

Charles L. Hamilton, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by plaintiffs' counsel:

I reside in Philadelphia. I am a paper manufacturer, and one of the gentlemen referred to by the last witness as having received certain rags in the summer of 1885. Our firm received from the Vigilant 500 bales in October, 1885, and we received 400 more in March, 1886; all from the Vigilant. The 400 received in March, 1886, though, were not from Lockwood & McClintock; they were part of the same cargo.

Q. Are you familiar with the process of disinfection?

A. I have never seen it done, but I examined the bales when they came to the mill.

Q. Did any of those bales show any appearance of having been put through this process of disinfection?

Objected to; objection overruled; defendants' counsel excepts.

A. I examined the bales personally, and about 25 per cent. of them showed a hole had been bored in them. The remaining 75 per cent. looked like any other Japanese rags we ever received. I think no hole had been bored in 75 per cent. of them, and the distinction between the two sets of bales was plain. I have been engaged in the business of paper manufacturing eighteen years, and am quite familiar with this kind of rags.

Q. How closely did you examine those that showed indications of the machine having been inserted?

90 A. Those that had holes in, we didn't examine as closely as those that had no holes.

Q. How closely did you examine those that had holes in?

A. I took an iron rod about the thickness of a lead pencil, and inserted it into the holes, half way down; two-thirds sometimes.

Q. Did you separate those bales afterwards?

A. They came in together.

Q. The bulk was broken?

A. Yes, sir; the rags were all used in our factory.

Cross-examination by defendants' counsel:

Q. How do you know that these rags came from the Vigilant?

A. We got papers stating that they did.

Q. That is all?

A. Yes, sir.

Q. You have no personal knowledge that they came from the Vigilant?

A. No, sir; I never saw them there, except the documents.

Counsel for defendant: I move to strike out the testimony of the witness, to the effect that these rags came from the Vigilant.

Motion denied; defendants' counsel excepts.

Q. The price of Japan rags fell considerably between June 1, 1885, and October, 1885, didn't they?

A. On these rags they did.

Q. This kind of rags?

A. On the Vigilant lot.

Q. I ask you if the price of Japan rags fell between June 1, 1885, and October 1, 1885?

A. I have no recollection that they did.

Q. Do you know the fact, one way or the other?

A. I am not familiar with that.

Q. Your portion of the business does not bring you the knowledge as to the prices of rags?

A. It does, in a measure; but I wouldn't be inclined to remember it so well now.

Q. Did the prices manifestly fall before March, the following year?

A. We bought in March following at much less prices.

91 Q. So there was a considerable fall in the market?

A. I can't say as regards that of other rags.

Q. But the plaintiff has testified that the Vigilant's rags received no damage from the process of disinfecting; do you mean to dispute him?

A. No, sir.

Q. You bought these rags at the market rate?

A. I think not; no, sir.

Q. Where are your mills?

A. At Lafayette station on the Schuylkill river.

Q. You had an epidemic of small-pox in the dusting-room there in 1885, did you not?

A. I don't know of it as a fact.

Q. Did you hear of it?

Objected to; objection sustained; defendants' counsel excepts.

Q. Did you have ten cases of small-pox among the workmen in your mill in the dusting-room in the year 1885?

A. Some of our people had small-pox about this time, two years ago.

Q. In October, 1885, were not your mills inspected by the inspector from the board of health, by J. Howard Taylor, medical inspector?

A. One of the board of health came there several times in the last two years, and previously; I can't locate the time. Those visits of the inspectors of the board of health to our mills within the last two years were occasioned by the occurrence of small-pox and the danger from rags.

Q. There were certain of these cases occurring in April and May, 1885?

A. I think earlier than that; perhaps it was April and May.

Q. Was not the first case April 15, and the second April 17, 1885?

A. I don't know.

Q. Do you know where the rags came from—from what ship—that were then being cleaned and sorted in your mills?

A. They were domestic rags.

92 Redirect examination by plaintiffs' counsel:

Q. Is there any restriction upon domestic rags?

A. We never had any that I know of.

Q. These particular rags that you got from the plaintiffs here, did they ever disseminate any small-pox?

A. We have not heard of it.

Q. And you would be likely to hear of it if it had occurred, wouldn't you?

A. I think so.

Q. How did that small-pox come in your establishment?

A. We do not know.

Q. Was there any conclusion reached by the health authorities as to how it occurred?

A. There was. They concluded that it started in our mills. They told us so.

Q. How?

A. From a person in Conshohocken; a young girl by the name of Donohue or McDonald; I have forgotten her name.

Q. Did that come from that particular girl, or from any rags there?

Objected to. Objection overruled. Defendants' counsel excepts.

A. I couldn't tell you that. She worked in our mill.

Q. She had been to a pest-house, hadn't she?

A. I don't know.

Recross-examination by defendants' counsel:

Q. Isn't that the report from Doctor Taylor to which you have referred (handing paper to witness)?

A. I don't know anything about this.

Q. And was not his case that of a young man in charge of the dusting machine in the dusting-room?

A. To the best of my knowledge a girl named either Donaldson or Macdonald; I have forgotten which.

93 THOMAS BOTTOMLEY, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

To plaintiffs' attorney: I reside at La Fayette, Pennsylvania. I know the last witness. My employment was foreman in the rag-dusting room in Mr. Hamilton's mills. I remember certain rags that came from the steamer Vigilant.

Q. Did you personally examine those rags?

Counsel for defendants: I object on the ground that this witness has no knowledge as to the source of these rags.

The Court: Do you know that certain rags were purchased from the plaintiffs?

The Witness: I do.

By counsel for defendants:

Q. How do you know they came from the plaintiffs?

A. Well, I take it as a fact from my employer saying so.

Q. And that is all you know about it?

A. Yes, sir.

By the Court: You refer to the same rags that Mr. Hamilton spoke of?

A. Yes, sir.

Counsel for defendants: I object to that.

The Court: Well, how can you prove the rags in any other way?

Q. They have been purchasing from the plaintiffs for some time, haven't they?

A. I don't know, sir.

By counsel for plaintiffs:

Q. As a matter of fact you identify the same goods described by Mr. Hamilton?

A. I do. I examined those bales particularly with reference to the insertion of a screw in any of the bales. Not more than 25 per cent. of those bales showed that any screw had been inserted in them. I have been handling rags for forty years, in England, 94 America and Japan, and am familiar with rags coming from Japan; I have worked them in Japan.

Cross-examination by defendants' counsel:

I know where the rags came from that were in Mr. Hamilton's mills in the summer of 1885 from what my employer said, that is all.

Q. Then you couldn't say other than what your employer told you?

A. I can only say that rags coming from certain places I know by the brand that is on the bales. That is the way I can tell. The character of the rags would show whether they are Japanese rags, or Italian rags or domestic rage.

Q. Were these rags that you had in October, 1885, about which you are testifying, rags that had been pressed under hydraulic pressure?

A. No; they were not Japanese rags.

Q. In October, 1885?

A. Exactly.

Q. Those that came from plaintiffs?

A. I am not speaking of rags that came from the plaintiffs.

Q. You were asked about rags that you received in your mill in October, 1885.

A. Yes, sir.

Q. Now I ask you if those rags had been compressed in bales by hydraulic pressure?

A. No, sir.

Q. You had none such?

A. I won't say there wasn't any, but those rags we were using were not of that kind.

Q. Were they rags that had been pressed in bales by hydraulic pressure—the rags that you supposed came from the plaintiffs?

A. Yes, sir.

Q. If a hole had been made in a bale tightly pressed in that way three or four months previous, was there a possibility that it would have been closed up by the pressure of the other parts of the bale and the handling, and if it had been under part of the pile before you saw it?

A. No, sir.

95 Q. Do rags never swell so as to open an aperture made in the bale?

A. Not if they are dry rags.

Q. Was there any evidence that these rags had, during the preceding five months, been in a moist state?

A. No, sir.

By the Court: Was this hole in twenty-five per cent. very apparent?

A. It was; very distinct.

By counsel for defendants:

Q. How large was it?

A. It was large enough for me to get two fingers in it; I should judge it would be one inch in diameter; some of them it went half way through the bale, and some two-thirds through.

Q. Let me ask you if every part of a bale of rags was subjected to steam for any length of time would the rags be moistened?

A. That would depend upon the length of time the steam was on the rags; if it was on the rags for eight minutes that would leave a moisture upon the rags which the steam reached; there would be a slight moisture I think, but if the rags were thus moistened by steam I don't think there would be a tendency when, if dried, to expand and fill that hole.

Q. Couldn't the hole be covered up by rags that slipped over it from the opposite side in handling the bales?

A. No, sir; they were too solid.

Q. If they were so solid why didn't the hole close up altogether?

A. Suppose you bore an inch hole in a log of wood, would it close up; I remember one visit of inspectors of the board of health in relation to cases of small-pox.

Q. Do you remember whether the first case of small-pox which occurred was April 15th, and was that of a young man having charge of the dusting-room?

A. I don't remember as to the date, but I remember the young man having the small-pox.

Q. Do you think that a hole formed by an auger in a bale of rags would remain as defined and sharp as a hole bored by an auger in a log of wood?

A. Pretty nearly.

96 Q. Do you think that a bale of rags which was dampened by steam would close a hole made by a screw any quicker than a dry bale of rags would?

A. I don't comprehend exactly.

Q. If two holes were bored in two separate bales of rags and steam was injected through one hole and not through the other, which would close first?

A. You must have one bale wet to begin with.

Q. Supposing both are dry when you start and you inject steam into one bale while in another bale you simply inject a screw and put no steam in it, which would close first?

A. The one where the dampness was would naturally close partially, but it wouldn't close it up by any means.

Q. Which would be the most apt to close as far as it went?

A. The one that was wet; and that would result from its gradual drying.

Redirect examination.

By plaintiffs' counsel:

I saw certain bales in which there were holes and others in which there were none. From what I know of rags and the way they are packed together by hydraulic pressure they become almost as solid as wet. I am positive from what I know of the properties of rags that there was no appearance of a screw ever having been put in them.

Q. Have you seen many of these so-called disinfected rags?

A. I have seen some cotton rags and some linen rags that came from the plaintiffs; they were Japanese rags; almost exclusively cotton rags; in fact entirely so.

WILLIAM LOCKWOOD, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

By plaintiffs' counsel:

I am one of the plaintiffs in this action; on the arrival of the Vigilant I received from the consignee of the vessel, Frank H. Brown & Co., the ship's quarantine pass, I took it to the board of health and lodged it there; I obtained the ship's permit to discharge her cargo, except rags; filed a bond and received from the health department a permit to land the rags; I did this personally; I then made application to the custom-house for permission to enter them in the usual way, and they declines to allow us to enter them; the deputy collector objected on the ground that there had been a great deal of objection on the part of this disinfecting company with reference to rags coming in which were shipped so near the end of the year, that they had referred the matter to Washington and he would not take it upon himself to enter them; and we were then referred to the collector; the collector didn't seem disposed to do anything about it, and so my partner went to see the Secretary of the Treasury at Washington. I had seen Doctor Smith prior to this, but in reference to another vessel. I didn't see him personally about this vessel, but my partner saw him and went to Washington and he really gave it more attention than I did. I, in company with my partner, appeared at the custom-house a number of times in regard to the Vigilant, and endeavored to get the collector to allow us to enter them. 97

By the Court:

Q. Did you have anything more to do with either of the defendants, Mr. Bartlett or Doctor Smith, in regard to these rags at the time the vessel was moved to Brooklyn? Fix the date.

A. I think it was somewhere between the 10th and 15th of June, maybe a little earlier, when I heard the vessel was going to Brooklyn, I went there and saw somebody in the board of health.

By plaintiffs' counsel:

Q. Was anybody present except the health officer?
—. I don't remember, Mr. Bartlett was not there at that time.

Objected to. Objection overruled.
Defendants' counsel excepts.

98 The Witness: On the next day I appeared there in company with my partner. I think Mr. Meyer was with us at the time and the matter was brought up. We claimed that we had a permit to land those rags in New York and felt that we were entitled to do it and objected to having them landed in Brooklyn, remitted as they were to the Baltic stores to be disinfected. We also stated that as to the responsibility of the parties in whose stores these goods were going we knew nothing. Mr. Bartlett stated that they were entirely good, that they had given bonds for half a million dollars and after Doctor Raymond consulted with his counsel he decided that he saw no reason why he shouldn't give the captain of the lighter a permit to land them. He gave it to him and we came away. That is all I had to do with reference to the Vigilant at that time.

Q. Did not Dr. Raymond say that the health officer had said so?

Objected to.

The Court: You may say all that was said at that interview.
The Witness: Mr. Bartlett was present.

Counsel for defendants: I object to this.

The Witness: I don't remember that at that time the matter of the rags being infected was mentioned at all. That is my recollection. Nothing was said about their being infected, not that I remember.

Q. What did Mr. Bartlett say?
A. Well, Mr. Bartlett did all the talking.
Q. Just state what he did?

Objected to. Objection overruled.
Defendants' counsel excepts.

A. Mr. Bartlett claimed that these rags were on his lighter
99 and he wanted permission for the lighterman to deliver them at the Baltic stores for the purpose of having them disinfected.

Q. Was there anything said on that subject by anybody at that time in the presence of Mr. Bartlett?

A. Well, they were to be taken there, as he said, for the purpose of being disinfected. As I say, one objection was made about the irresponsibility of the parties, and Mr. Bartlett said that they had given bonds for half a million dollars, as far as that was concerned why that was all right. I do not recollect anything else that Mr. Bartlett said.

Q. Did Doctor Raymond say anything about the rags being free from infection at that time in the presence of Mr. Bartlett?

A. I don't think the question had been brought up. Prior to that I saw Doctor Smith with reference to the Battaglia. It was at quarantine. I think it was in April, about the time of the arrival of the bark Exile from Leghorn.

Q. What was said between Doctor Smith and you then?

Objected to; objection overruled.

Defendants' counsel excepts.

A. I went to quarintine, and the matter of these goods on the Exile was brought up. I told him we had some goods coming on the Battaglia from the same ports and with the same papers as those for the Exile, and I told him what they were and asked him if that would be satisfactory. He said it was, providing we would give him a certificate from the counsel that the shipper of the goods was a man whose reputation was good and whose statement could be relied upon. We immediately either telegraphed or wrote to our correspondents at Leghorn and got such a certificate. Then, after receiving that, along in the month of May, I went down to quarantine and presented it to Doctor Smith. I asked him if it was satisfactory. He said it was, and after her arrival the goods
100 would be allowed to pass up without being disinfected.

Mr. Prentice: I move now to strike out all that as improper.

Motion denied; defendants' counsel excepts.

Nothing else was said by Doctor Smith at that time. That is all the information I wanted. I afterwards saw Doctor Smith either at the health board or elsewhere.

Q. State what took place there?

Same objection, ruling and exception.

A. On the arrival of the Battaglia we made application to have those goods entered. In order to enter them it was necessary to get a permit from the health officer, and I went to quarantine and to the board of health, where I met him and asked him for the usual pass. He declined to give it to me or to give me any reason for it, although he had the papers that I had given him two weeks prior to that. I asked him for the reason, but he declined to state any. I paid the money to Mr. Bartlett personally. I won't say whether I paid it to him, but it was paid in his office, anyway.

Q. Did you pay that bill (handing paper to witness)?

A. Yes, sir.

Plaintiffs' counsel: I offer it in evidence.

Defendants' counsel: We object to it as immaterial and irrelevant, and as incompetent against Dr. Smith.

The paper is admitted, and marked Plaintiffs' Exhibit R, April 20, 1887.

Defendants' counsel excepts.

Cross-examination by defendants' counsel:

Q. Was it not on the 17th of June that you applied to Dr. Smith

101 for a permit for the discharge of the rags of the Battaglia, and is not this the paper that you received (handing Defendants' Exhibit 13 to the witness), and did you not then present it to the health officer at Brooklyn?

A. I never saw this paper before. We had on the Battaglia one hundred and fifty bales, I think.

Q. Was this the paper that you obtained (handing Plaintiffs' Exhibit I to the witness)?

A. I never obtained this paper; that is the health pass for the Battaglia. It was not obtained by our firm. We had no other pass from quarantine for the Battaglia besides this.

Q. Have you any doubt that that was the correct date, June 17th?

A. I know nothing about that paper at all.

Plaintiffs' counsel: We read now the deposition of Charles S. Fairchild, then Assistant Secretary of the Treasury of the United States.

Defendants' counsel objects to the telegram of April 15, 1885, annexed to said commission as Fairchild Exhibit No. 3.

Objection overruled.

Defendants' counsel excepts.

Fourth day.

EMORY W. MCCLINTOCK recalled.

By plaintiffs' counsel:

Q. In your testimony yesterday you spoke of having seen Dr. Smith after the rags from the Exile were disembarked, and of having shown to the doctor certain papers which referred to the cargo of the Battaglia.

Objected to as irrelevant, incompetent and immaterial.

Objection overruled; defendants' counsel excepts.

102 Q. Look at the papers which I now show you and state whether those papers are the papers that you showed Dr. Smith on that occasion (handing papers to witness).

A. Yes, sir. On the exhibition of those papers — Dr. Smith he examined them only casually. He looked at them.

Q. Was there any conversation between you and him touching these papers?

A. Yes.

Q. State what it was.

Objected to as irrelevant, incompetent and immaterial; objection overruled; defendants' counsel excepts.

A. He said at that time that although he had previously said he would admit the vessel on those papers he would not then pay any attention to them.

Defendants' counsel: We move to strike that out. That is not conversation. He is asked to state conversation, and instead of that he goes on to give his conclusions.

The Court: Is that what Dr. Smith said to you?
The Witness: Yes, sir.
Objection overruled; defendants' counsel excepts.
Plaintiffs' counsel: I now offer the papers in evidence.
Marked Plaintiffs' Exhibit T, April 21, 1887.
Defendants' counsel excepts.

Q. You have said that although he had previously told you that he needed those papers——

A. (Interrupting.) He did not tell me so; he told my partner so.

Q. In the conversation with you he did not tell you that he needed those papers?

A. No, sir; but I brought him those papers in consequence of what my partner told me, and having exhibited them to me he said what you have stated.

103 Plaintiffs' counsel reads the papers to the jury.

Witness continuing: On the Battaglia we had only 150 bales of rags altogether; and these 150 are the 150 that belonged to us on that vessel described in these certificates.

Q. Did they form part of another cargo or were they of the importation that you made from Leghorn; were they the whole purchase or did they form part of another purchase that had come in by another vessel?

The Court: I think he has already stated it; he said that part of the purchase came by the Exile, and that this was the balance of the purchase.

The Witness: Yes; in this bill which we paid to Bartlett & Co., under protest there are charges for lighterage (Exhibit K) and storage aggregating about $2,700, outside of the disinfecting itself; I live now in Holyoke, Mass.

Q. If these goods had not been seized by Bartlett & Co., or by the other authority would you have had to pay any lighterage or was any lighterage necessary to be done in order to bring those goods within your disposal for the purpose of merchandise?

Objected to as asking for a conclusion, and as incompetent testimony; also on the ground that the question calls for events that have not happened.

The Court: I think I shall sustain the objection; I think it is not material.

Defendants' counsel: My objection is that it calls for a conclusion and not a fact.

The Court: If it is to be claimed by you that the lighterage was a part of the necessary expenses of landing the goods, that he would have to incur anyhow, why it is probable then that this testimony is material.

104 Defendants' counsel: I have not objected to proof such as your honor indicates; I have objected to the form of this question which calls for a conclusion; I don't take the objection that it is immaterial.

Objection overruled; defendants' counsel excepts.

A. No, sir.

Q. Would there have been any labor such as is charged?

Same objection, ruling and exception.

A. There would not.

Cross-examination by defendants' counsel:

Q. When was this interview to which you have now testified with Dr. Smith?

A. On the 17th or 18th of June, 1885.

Q. You testified relating to the same interview yesterday, didn't you?

A. I don't know.

Q. Do you mean to say that you have no recollection of your testimony yesterday concerning such an interview?

A. I don't think I did.

Q. When did this interview come to your mind?

A. I think it was day before yesterday that I testified about it.

Q. At the time you testified had you in your memory this same statement you now make?

A. I made that at the same time.

Q. Then you mean to say that you are now repeating what you testified to day before yesterday?

A. I think so; yes, sir.

Q. And you have nothing more to add than that which you testified to the day before yesterday about the interview?

A. I am willing to answer any question you may propound.

Augustine Smith, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

105 Direct examination by plaintiffs' counsel:

I reside at No. 4 East Sixteenth street. I am a paper-maker. I was vice-president of the American Paper Makers' Association. I am still connected with that organization. I have been in that business some 30 or 40 years, and during that time I have had a great deal to do with the importation of rags. I have had interviews with Dr. Smith on the question of how to bring in rags with the least possible danger to the health of the community. I had such an interview prior to the 10th of June, 1885. I remember the time of the cholera scare. I had an interview with Dr. Smith about that time on the question of importing rags. It was either in October or November, 1884.

Q. What was the subject of that conversation?

Objected to. Objection overruled. Defendant's counsel excepts.

A. Dr. Smith told me that he did not think any danger was to be apprehended from cholera in the importation of rags.

Q. What was the subject-matter of that discussion between you and Dr. Smith when that came to be said?

A. The subject-matter was the order of Mr. Coon, acting Secretary of the Treasury, who had prohibited the importation of rags entirely. That matter I discussed with Dr. Smith.

Q. Did you say that he thought as you did?

A. I couldn't say that he said that in those words.

Q. What did he say?

A. I told him that I thought the order was unnecessary, that there was no necessity for prohibiting the importation of rags; that it was right and proper to prohibit rags from infected ports, but rags from healthy countries ought not to be meddled with. I don't remember the exact words, but the substance was that he thought as I did.

106 Q. Either at that conversation in October or November, 1884, or subsequently, did you have an interview with Dr. Smith in a representative capacity or as a committee?

Objected to. Objection overruled. Defendants' counsel excepts.

A. No; I did not.

Q. Did you state to him that you were an officer of any association at that time?

Same objection, ruling and exception.

A. I don't think I did. I think afterwards I had a subsequent interview with him. I don't think I had an interview with Dr. Smith in which I described myself as an officer of any association. Along about the time that these rags on the Vigilant came in I had a further interview with Dr. Smith. I had conversations touching the regulations to be adopted by the health authorities for the importation of rags.

Q. Will you state what those were?

Objected to.

The Court: I am inclined to admit all declarations of these two defendants on the subject of rags.

Defendants' counsel except.

A. I had an interview with Dr. Smith, in March, 1885. I told him we were trying to get the Treasury Department to revoke their regulations of December, 1884, which was issued by Mr. McCullough, after he sent for me and consulted with me about that order of December 22, 1883. We had a change of administration. I told Dr. Smith, in March, 1885, that we were trying to get those orders revoked, and I told him I thought we would succeed, and that when they were revoked, that we hoped the business would be handed over to the State authorities, and that they would enable us to pursue our business without molestation. Dr. Smith 107 said his responsibilities were very great. That it was very important that the regulations of all health officers should be uniform. I told him I did not know anything about that, but, whatever regulations there were, they ought not to be oppressive to the merchants and manufacturers, and if some of the health officers made oppressive regulations, I hoped he would not.

Q. Did you make any specific suggestion to him as to the importation of rags from infected districts?

A. I told him we would be satisfied to have rags from infected ports prohibited entirely, but rags from healthy ports ought to be admitted without trouble. He did not say anything in reply to that, but talked about his responsibility; nothing except that; his general talk was that way.

Q. Did Dr. Smith, in this conversation, either accept or reject the suggestion made by you in words?

Objected to on the ground that it calls for a conclusion, and not for the conversation itself.

The Court: Did he state anything to you in relation to the suggestions that you had made, and if so, what?

The Witness: No. He did not say he would and he did not say he wouldn't; but he talked about his responsibilities. I had some of those rags that were received on the Vigilant. I examined them. I did not see any signs of a screw or anything having been thrust through them. Not the slightest. I have ten bales in my store now, which anybody can look at, and judge for themselves. I don't think those ten bales look as though they had ever been perforated by anything; even by a gimlet.

Cross-examination by defendants' counsel:

Q. In a part of your examination, you used the words that the
Secretary of the Treasury had stated to you, that he proposed
108 to hand over the subject of the importation of rags to the
health officer.

A. No. I told you we were trying to get the Secretary of the Treasury to hand it over.

Q. You understood then that the Secretary was controlling the importation and landing of rags, did you not?

A. I thought he had something to do with it. We could not land them without his permission.

Q. You spoke of trying to procure the action of the Secretary of the Treasury, in that he should hand over the importation of rags to the State authorities?

A. Yes, sir.

Q. Then you mean to convey by that, that the Secretary was controlling the landing of rags?

A. Yes, sir.

Q. That was true, wasn't it?

A. I think it was.

Redirect examination by plaintiffs' counsel:

Q. Is that a copy of a letter sent by you to the health officer (handing paper to witness)?

A. Yes, sir.

The letter referred to is marked Plaintiffs' Exhibit U for identification.

I sent it to Dr. Smith by messenger.

Q. Was there any answer received to it?

A. I am not certain. I haven't any answer here.

Albert A. Meyer, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

By plaintiffs' attorney:

I am an insurance broker. I was in the Japanese commission business in January, 1885. Among the commissions I discharged in Japan the gathering of rags was a part of it. My firm shipped the rags that were imported in this city on the Vigilant for the plaintiffs. I superintended the gathering of those rags myself; I was in Japan prior to their shipment. I
109 bought those rags from the collectors in Japan and supervised the shipping of them to the plaintiffs. Of those 2,900 bales that were on the Vigilant, all of them were shipped before the 1st of January. Our entire lot was actually on the deck of the ship. And these 400 bales that were not on board the ship until the 17th of January belonged to another ship, but they were in lighters alongside of the ship ready to be put on board. But they were not actually on the ship's deck. I was not in Japan at that time. Not up to the shipment. I was there until July, 1884. Up to July, 1884, there had been no cases of cholera in Japan since 1877. I was in Japan myself up to July, 1884.

Q. Since your return from Japan in July, 1884, have you consulted the consular reports as to the health of that country and as to the existence of cholera there?

Objected to; objection overruled; defendants' counsel except.

A. I consulted the *the* Japanese certificates, yes.

Q. Did you consult the consular reports of the Department of State here?

Same objection, ruling and exception.

A. No, sir.

Q. What do you *mean*, that you consulted?

A. The Japanese have sanitary laws and they have public books, and I went to the Japanese consulate here and obtained one of their reports, and read it over carefully to see if there had been any cholera.

Mr. Goodrich: I move to strike out the answer as immaterial and as hearsay.

Motion denied. Defendants' counsel except.

Witness continuing: All these rags that our firm shipped were gathered before I left Japan. And all these 2,900 bales belonged to
110 the shipment of our firm. They were gathered in the suburbs of the city of Hioga; in small villages adjacent to the city. I saw those rags after they had been gathered. I saw them before they were compressed in bales; they were perfectly clean rags. I was at

Washington with Mr. McClintock on the occasion of the interview before the Secretary of the Treasury between him and Mr. Bartlett. Mr. Bartlett, Mr. Fairchild, Mr. Silas B. Dutcher, Mr. Scott Smith, Captain Gould, and, I believe, Mr. McClintock's counsel, ex-Secretary Boutwell, and myself were present. There was a discussion there concerning these rags. I have heard the testimony of Mr. McClintock as to what occurred at that interview. I also heard all that transpired at that time.

Q. Will you state your recollection of that interview exactly as you remember?

Objected to; objection overruled; defendants' counsel except.

A. Mr. McClintock asked the Secretary to telegraph to New York to allow him to land the rags on the Vigilant. Then Mr. Scott Smith said that those rags had not been shipped up to the 1st of January, and that they had no permit to land them in New York from the board of health, to which we produce the bills of lading. The Secretary said he would refer the whole matter to the health authorities at New York. I do not remember the exact words he said as to the sufficiency or otherwise as to the certificates that we produced. He listened to Mr. McClintock and then to Mr. Smith. Mr. Smith said that he had proved that these rags were not shipped up to the first of January. We had the bills of lading to prove that they were; Mr. McClintock said that he had the bills of lading to prove that they were shipped before the first of January. I think Mr. Bartlett said that Mr. McClintock had no certificate from the board of health to land those rags.

Q. Is that all you remember that was said?

111 A. No; I think the Secretary then said that he held the certificate in his hand. Mr. Bartlett said that he had received a telegram from New York stating that no certificate to land these rags had been granted—or that it had been revoked—while the Secretary at that very time held the certificate in his hand which we had got from the health board. I refer to the certificate from the New York health board. That is all I remember about the Washington interview. I went with McClintock down to quarantine either the 3d or 4th of June. After the arrival of the Vigilant at quarantine.

Q. What occurred at that interview?

Objected to; objection overruled; defendants' counsel excepted.

A. Dr. Smith told Mr. McClintock that he didn't know why these rags were not landed. He had given him a permit and all the necessary papers to land those rags, and he couldn't give him any further assistance. Mr. McClintock asked him if he would endorse with him on the back of the paper. Dr. Smith said no. I then asked Dr. Smith to do it, and he said he had made all the necessary remarks on the subject and would say no more. That was on the Staten Island ferry-boat. He said that he would say no more. Then we came back to New York. I did not see Dr. Smith again that day. That was in the evening. Then the next place I saw him was at the custom-house. I had no further interview with him, though, until at the health board, in Mott street. I remember following Dr. Smith at one time.

Q. You heard the testimony of Mr. McClintock as to that occasion?

A. Yes, sir; I followed Dr. Smith one day, it was in July, 1885.

Counsel for defendants: We admit that Dr. Smith did go to Mr. Bartlett's office and probably has been there since.

112 Cross-examination by defendants' counsel:

Q. Have you testified to any fact on your direct examination which is not within your personal knowledge?

A. Nothing that I know of.

Q. Do you remember the testimony which you have given?

A. I think so.

Q. Are you aware that it is the duty of a witness in testifying to speak of that only which he knows from personal observation?

A. I try to answer Mr. Cochran's questions as well as I could.

Q. (Repeated.)

A. I answered Mr. Cochran's question. That is all I can say.

Q. I want to know if you remember testifying to any fact which was not within your personal knowledge while you have been under the examination of Mr. Cochran?

A. I don't remember it.

Q. Have you testified to any such fact?

A. I don't think I have.

Q. Were you in Japan on the 1st of January, 1885?

A. No, sir.

Q. Were you there during December, 1884?

A. No, sir; I didn't say so. I said I left there in July, 1884.

Q. Did you swear that all these goods were aboard the ship before she sailed?

A. They must have been, before she sailed.

Q. Did you testify to that?

A. Certainly I did.

Q. Did you know that fact of your own knowledge when you testified that you were absent from Japan, and still testified that these goods were all aboard the ship before the 1st of January?

A. That is not what you asked me.

Q. I repeat the question.

A. You were asking me if I thought they were on board before she sailed.

Q. I didn't ask you any such question. Now, I will commence again. You testified on direct examination that the rags named in your bills of lading were aboard that ship before the 1st of January?

A. Yes, sir.

113 Q. Did you see them aboard before the 1st of January?

A. No.

Q. You left six months before that. Now, do you undertake to testify to a fact as a fact when it was not within your personal knowledge?

A. I think it was within my personal knowledge.

Q. Do you swear that the shipping of rags under your bills of lading and their being laden aboard the ship is within your personal knowledge?

A. If my firm issues a bill of lading I will swear that it was correct.

Q. Then you will swear to a circumstance about which you have no personal knowledge and testify that it was correct when you were not a witness to the fact?

A. I will swear if my firm issued a bill of lading for a quantity of rags as being on board a vessel, that it was correct.

Q. Although you don't know that it is a fact?

A. I am responsible for what my firm did, and I will swear to that.

Q. I repeat my question. Will you swear to a circumstance as existing when you know it only by hearsay?

A. The bill of lading is not hearsay. It was negotiable, and that made it a positive fact.

Q. Do you know the fact that bills of lading were issued for cargo which was not on board on the 1st of January?

A. All I know is with reference to these 2,920 bales, that they were on board.

Q. Do you know it to be a fact that it has been stated in your presence that bills of lading, dated before the 1st of January, were issued for goods which Captain Gould said were not on board by the 1st of January?

A. I don't know that.

Q. Did you hear that stated?

A. I don't remember it.

Q. Didn't you hear that statement made in Washington at that interview?

A. I don't remember that I heard it.

Q. Wasn't that subject under discussion?

A. What subject?

114 Q. The subject of bills of lading being dated before the 1st of January for cargo which was not laden until the 9th, 10th and 11th of January?

A. There was a great deal of discussion there.

Q. I ask you if that was not under discussion?

A. Part of it may have been.

Q. And the fact was stated that although the bills of lading were dated before the 1st of January some of the goods were not shipped until after the 1st?

A. I heard Captain Gould say at the time that the goods were on board lighters alongside the ship.

Q. That is not aboard ship?

A. It's just the same, because they have left the shore.

Q. Then you consider when cargo is on the lighter that it is aboard ship?

A. There are certain ways of explaining that.

Q. I want the physical fact.

A. If I hold the bill of lading I consider that they are on board vessel.

Q. Are you willing to swear that all this cargo besides yours was aboard ship before the 1st of January?

A. I was told that part of it was on board lighters.

Q. (Repeated.)

A. No.

Q. Then why do you say that if it was alongside it was still aboard the ship?

A. I don't say that.

Q. Well, isn't it true that you don't know whether your rags were aboard or not?

A. I know they were.

Q. Of your own personal knowledge?

A. Yes, sir.

Q. Is your knowledge of the other fact to which you have testified any better than that which you have about the shipment of your goods?

A. I suppose all my knowledge is about the same.

Q. Tell me how much knowledge you have upon the subject of where the rags came from. Did you see them gathered?

A. Yes, often.

Q. These rags?

A. These particular rags that were on the Vigilant.

Q. You saw them gathered?

115 A. I did, and bought them from men as they brought them to my warehouse in Japan.

Q. Where did you see them?

A. As they were brought to my warehouse.

Q. Then what knowledge have you as to where they were gathered?

A. Because I knew where the man that brought them there lived.

Q. Is that all?

A. That is all.

Q. And you will undertake to swear that they were gathered from the surrounding country because you knew the men lived there?

A. Not for that reason alone. Transportation in Japan is very expensive and the low prices that the Japs get for these rags would not allow them to carry them any great distance.

Q. Have you any knowledge personally as to where these rags were gathered before they came to your warehouse?

A. I couldn't tell you the exact streets, or the houses where the rags were gathered.

Q. Then you want to correct your testimony to that extent?

A. I don't think I need to correct it.

Q. Then you don't want to make any correction in your testimony as to the place where those rags were originally gathered, after I had called your attention to the fact that you have no personal knowledge upon the subject and never saw the rags until they were brought to your warehouse in Hioga?

A. What I understand as my personal knowledge differs so from the way you put your question that I can't answer you.

Q. Do you know what the meaning of personal knowledge is?

A. Yes.

Q. What is it?

A. What I understand as my personal knowledge is from the way I bought these rags; I know the men I bought them from, and I know where they came from.

Q. Do you mean to swear that you now have personal knowledge as to where these rags were originally gathered?

A. I will swear to the place where I bought them.

116 Q. Will you swear to the place where they were originally gathered?

A. No, sir.

Q. Then do you desire to correct your testimony to that effect?

A. I don't think it needs correction.

Q. Was your firm an extensive dealer in rags?

A. Quite so. We shipped to this country in 1884 eight thousand or nine thousand bales; I first went to Japan previous to 1884—in 1876.

Q. Did you remain there from 1876 to 1884?

A. I made frequent visits to New York, but they never lasted more than one or two months. I went there in 1880, and remained there all the time from 1880 to 1884. During the year 1884 we shipped eight thousand or nine thousand bales. During the year 1884 we shipped rags to various other ports, Antwerp and other places.

Q. What portion did you ship before you left?

A. I don't remember the exact quantity.

Q. You undertake to swear that eight thousand bales were shipped during the year?

A. Not in round numbers.

Q. You testified that you shipped eight thousand bales?

A. I don't know that it was exactly eight or nine thousand.

Q. You have testified that between eight thousand and nine thousand bales were shipped by your firm in 1884. Have you personal knowledge of that fact, or were part of them shipped after you left Japan?

A. Part were shipped after I left.

Q. Then you have undertaken to swear to facts of which you have no personal knowledge and observation?

A. I think I have personal.

Q. You think you have personal observation of the shipment of rags from Japan by your firm after you left Japan in 1884?

A. Yes; I think so. In fact I know I have the knowledge.

Q. Have you equal knowledge on the subject of any case of cholera in Japan from 1877 to 1885.

A. I won't be as positive of that.

117 Q. I call your attention to the fact, as stated by you, that you were not in Japan at all during a portion of the time intervening between 1877 and 1885, and I ask you again whether you are willing to testify that of your own personal knowledgs there was no case of cholera in Japan during that interval?

A. I won't testify to that; no

Q. Do you desire to change the testimony you have already given on that subject?

A. I don't think I said there was no case of cholera. I said I heard of no case.

Q. Do you say now that you heard of no case of cholera, or that there was no cholera?

Objected to; objection sustained; defendants' counsel excepts.

Q. Do you mean to be understood as testifying that there was no case of cholera in Japan from 1877 to 1885?

A. I won't swear to it.

Q. You will not?

A. No, sir.

Q. Then, if you have made any such statement, you desire to correct it?

A. I never made any such statement. I said I never heard of any.

Q. That you are positive of, are you?

A. Positive of what?

Q. That you stated in your direct examination that you never heard of a case of cholera, instead of stating that there was none?

A. I never heard of a case. That is all I said, I think.

Q. Are you positive about it?

A. If you know it, why there is no use asking me again.

Q. Did you ever hear of a cholera scare in Japan in 1882?

A. No, sir.

Q. Did you hear of any epidemic of cholera in 1882?

A. No, sir.

Q. Will you swear there was none?

A. No, sir.

Q. Don't you know the fact that it has continued ever since there?

A. What has continued ever since?

Q. Cholera?

A. No, sir. I know it couldn't.

Q. How large a city is Hioga?

A. About one hundred thousand.

118 Q. Is it a walled city?

A. No, sir; it is a seaport town.

Q. And where is the nearest large seaport?

A. About three hundred and fifty miles away. That is Yokohama, and there is no seaport from which rags are exported between those two places.

Q. Isn't it true that rags are gathered all over the country for shipment at one place or the other?

A. No, sir.

Q. Do you know that of your own knowledge?

A. No, sir; because there are paper mills that consume the rags in certain places.

Q. Where is the nearest paper mill?

A. Otsu.

Q. How far is that from Hioga?

A. About eighty miles. There is also a paper mill at Hioga, and they consume very large quantities of rags at both of those places.

Q. Where are the rags bundled into bales?

A. At my warehouse.

Q. And there packed by hydraulic pressure?

A. Yes, sir.

Q. Can you give me any idea of the amount of reduction as they are finally compressed into the bale?

A. When they are pressed in the bales they measure about thirteen to fourteen cubic feet. I suppose the rags are compressed to about one-third the original size.

Q. What do you mean by the word perfectly clean?

A. Commercially; as they are looked upon commercially.

Q. You stated that these rags were perfectly clean?

A. Commercially; certainly.

Q. You didn't add the word commercially.

A. I only speak as a merchant.

Q. What do you mean by commercially perfectly clean?

A. Such as a merchant would buy.

Q. A merchant don't particularly examine rags to see whether they are clean?

A. I don't think he would buy them if they were infected.

Q. Then you draw the distinction, and by perfectly clean
119 commercially you mean that they were not infected?

A. Well, such rags as a merchant would buy and ship; I have known cases of rags that were infected.

Q. And merchants bought and shipped them, didn't they?

A. No, sir.

Q. Where did you hear of infected rags?

A. In Italy. I have read it in the papers.

Q. But merchants bought them, didn't they?

A. I don't know that they did.

Q. Did you ever follow Dr. Smith from one place to another.

A. I followed him once.

Q. When was that?

A. In April, 1885.

Q. Where did you follow him?

A. I followed him from the Staten Island ferry to Mr. Bartlett's office.

Q. Why did you do that?

A. I wanted to have a conversation with him.

Q. Did you see him on the ferry-boat?

A. No.

Q. Where did you first see him?

A. As he came off the ferry-boat.

Q. Was anybody with you?

A. Yes, sir.

Q. Where did he go?

A. I think part of the way.

Q. How far?

A. I don't remember.

Q. Was the road from the ferry to Mr. Bartlett's store on the way to your own store?

A. Part of the way. My office at that time was No. 80 Broad street.

Q And in going from the Staten Island ferry to your office, you didn't usually go by Mr. Bartlett's office?

A. No, sir.

Q. His office is at 18 Old slip, isn't it?

A. Yes; I don't know the number.

Q. Isn't it true that you followed him in order to get some evidence against him?

A. I had nothing to get evidence for.

Q. Why didn't you speak to him?

A. He was with somebody, I believe. I saw him go into Mr. Bartlett's store.

Q. With some gentleman?

A. That I can't be positive about.

120 Q. Where did you leave him?

A. I continued to walk up Water street to Pearl; at least up to Fulton street.

Q. On the way to your store?

A. No; I was not going to my store.

Q. Why didn't you go in and speak to him?

A. I didn't know Mr. Bartlett, and there was no necessity for me to go in there then.

Q. Were you on the road to the plaintiffs' store?

A. I don't know where I was going.

Q. Their store was in the direction you were going?

A. Their store was on Pearl street.

Q. Did you go to their store?

A. I don't think I did.

Q. Who told the plaintiffs or their counsel that you followed Dr. Smith from the ferry to Mr. Bartlett's store?

A. I don't know.

Q. Could anybody else have told them except you?

A. I think I was with Mr. Lockwood part of the time.

Q. Part of the time you were walking up?

A. Yes, sir.

Q. Did he tell you to follow Dr. Smith?

A. No; I told you I wanted to talk with Dr. Smith.

Q. I understand it.

A. I understand you, too.

Q. How did Mr. Lockwood or Mr. McClintock derive information of the fact that you had followed Dr. Smith from the ferry up to Mr. Bartlett's store, and that you saw him enter it?

A. I don't know. Mr. Lockwood, I told you, was with me part of the time. I am acquainted with Mr. Bartlett, and I have been in his store frequently.

Q. Was there any reason why you shouldn't follow Dr. Smith into that store?

A. I didn't know Mr. Bartlett at that time. I first met him in Washington, in the secretary's office.

Q. But how came you to follow——

A. You asked me just now how I met Mr. Bartlett?

Q. How did you know where his store was?

A. Why, everybody knows Mr. Bartlett. He is very well known—people that do business with him.

121 Q. Isn't that a pretty general statement of yours?

A. People that do business with him.

Plaintiffs rest.

Counsel for defendants moves for a nonsuit. Motion denied. Exception.

Counsel for defendant Smith: May it please the court. At the end of plaintiffs' case we desire to enter our motion for nonsuit, on the ground that the plaintiffs have failed to prove facts sufficient to sustain the cause of action against the defendants.

The Court: You make it for all the defendants?

Counsel for defendant Smith: Yes, sir; and I also make it for Dr. Smith, health officer, independently, on the authority of certain cases to which I shall have the honor to call your attention. In making this motion, may it please the court, we desire to be understood as making it seriously and with confidence, and not as mere matter of form, for, according to our convictions, this action as laid has as completely failed as it was foreshadowed it must fail in the opening of the eloquent and distinguished counsel who here represent the plaintiffs.

There can be no question, may it please the court, that we have before us in this complaint an action for conspiracy. There is not an allegation in this complaint but depends upon the charge repeatedly alleged connected with all the acts from which the damages are said to flow, and without which they could not exist—the combination and conspiracy of the health officer, Dr. William M. Smith, whose office and authority and official acts are stated in the complaint; and the defendant Bartlett, who it is alleged, corruptly
and wrongfully, by reason of this combination and con-
122 spiracy, and in consequence of it, took and held these goods.

Now, I beg to call your honor's attention to the fact that one allegation of the complaint has disappeared completely in the statements of the principal witness for the plaintiffs, Mr. McClintock. The allegation in the seventh paragraph that the goods were damaged by the disinfection. It appears that whatever damage there was, was the result of the delay—the difference in price, as the witness states it—between the days in which he sought for what he claims to be the release of these goods, and the release (and we call the attention of the court particularly to the fact) from the United States officers. But whoever from the date of that release that he sought of these goods, up to the day in October when he obtained them, by offering for the first time the pay for the services of lighterage and disinfection, made an offer to pay for those services? And they had added, by alleging and seeking to prove—whether relevant or material your honor will judge—that most of the goods were not disinfected; and yet they have followed that with proof that whatever was done with them so far as they knew there was no contamination or injury resulted from their distribution after they left the port of New York or the hands of the Paper Stock Disinfecting Company.

So, may it please the court, the question of damage as far as it is of importance here, must be confined to one source, that surely, of the delay between the date in June, the 10th or 17th, and the day in October when they received the goods.

Now, it is alleged that the control of these goods was taken from the plaintiffs through this conspiracy and the combination of at least two men, and that it was necessary thereto that the health officer whose office and powers are here set out should have been a principal participant; and then by that conspiracy it was Bartlett that took the goods, seized them, and subjected them to a
123 process of which they were unwilling to be the beneficiaries
and for which they refused to pay. And it is summed up when the damages are stated, after as I have said before, the allegations throughout the whole that every one of these acts was an act of combination and conspiracy: "That by reason of said wrongful acts as aforesaid by said Smith, conspiring and colluding with said Bartlett & Co., the plaintiffs were put to and suffered damages in the sum of $15,000."

The first allegation of importance is "that the defendants in this conspiracy conspired and combined to have the said rags condemned as unclean and infectious and subjected to a process." The next is that, "in furtherance of said wrongful conspiracy and combination the said Smith under color of his office, but wrongfully and unlawfully, caused said rags of plaintiffs, between the 5th of June and the 17th of June, to be taken from said vessels and transferred to said place of business of said Bartlett for the purpose of disinfection." The next is that "by reason of said wrongful conspiracy said Bartlett & Co. kept and held the goods from the 1st day of June until the 1st of October." And the last is that "by reason of these acts Smith under color of his office and Bartlett, as the seizors of the goods," they were damaged.

Now, the answers have put in issue each of these allegations. The conspiracy and the combination is denied. In the answer of defendant Smith, he sets up affirmatively all and each of his acts were and was official and in the necessary discharge of duties imposed upon him by law, and in the exercise of a wise discretion conferred upon him by the statutes of the State, and that whatever he did was done as such public officer, for the protection of the people of the State

and the port within his jurisdiction; and he denies any and all damages, direct or indirect, from any of his acts. The defendant Bartlett sets up besides these denials, the defense that charges
124 were never tendered or paid to the defendants until after
they had begun a suit for claim and delivery, which suit they discontinued, and to which I call your honor's attention the defendant Smith was not a party; and on the settlement of that case, the plaintiffs paid to the defendant Bartlett the amount of the charges for services they had rendered.

Now, they have sought to escape from the natural force of their own allegations by claiming under a case in Hill (Hutchins *v.* Hutchins), that the conspiracy was not the foundation of the action, as in that case it was held not to be. Your honor will remember that the case of Hutchins *v.* Hutchins was a case in the early——

The Court (interposing): Have you got that case there?

Mr. Prentice: Yes, sir; I will hand it to your honor. That is a case, may it please the court, where Chief Justice Nelson, whose veneration for the common law and the old principles of law, and the old forms of pleading, are well known in our profession, determined was a case of trespass on the case, and not *per se* a case of conspiracy. And your honor will remember that the case of Hutchins was one where by fraud and false representations to a testator, a bequest or legacy was diverted, where one lie was just as good as a hundred, where the fraud, if there was fraud (and it was held there, I believe, that there was), was the fraud of one man, and the conspiracy was evidently only a form, and it was that one defendant who was held liable, because in that case the acts were not the necessary consequences, as alleged, of a combination or a conspiracy. It was the act of one, and damages was the foundation of that action, damages by the fraud of one person. But I have already had the honor of calling your attention to a different class of cases, which are cases of conspiracy. And your honor will perceive at once that this is a case that you now have before you where the act of
125 no one single individual, as alleged, could have been the
source of any injury or harm whatever; or more particularly, as to this case, certainly, could not have occasioned the damages which they seek; and that so far, their allegation is true, and we agree in the logic of their complaint that if they had any damages, they were "as aforesaid, by reason of said wrongful acts, the conspiring and colluding with said Bartlett & Company."

Now, such a conspiracy as alleged, and such combination, unless it could be brought home to the defendants in this case, and as affecting the plaintiffs, would not have been the foundation of an action. But in the case of the New York Guaranty and Indemnity Company *v.* Gleason (78 N. Y.), which was a case of conspiracy, it was held that "in an action to recover for moneys had and received by one R upon a forged bond, evidence connecting one of the defendants with the forgery, was not sufficient to make her liable, in the absence of evidence of any agreement or understanding between her and the forger that she was to share in the proceeds of the forged paper, or so personally to have a benefit therefrom, and that

R was implicated or acted as her agent, or that she actually received a part of the sum." "It seems," says the court, "that if it had been shown that moneys and securities were found in said defendant's possession, part of the money so obtained, it would not have been sufficient to hold her liable for the whole." And that, furthermore, it was there held that to make the defendant liable she must have been shown to have been a principal in the conspiracy.

Now, sir, that case does not stand alone, but I need not occupy your honor's attention at the present time. And now I call your attention particularly to the fact that when I opened the door to Mr. McClintock, and knowingly, that he might exhibit to the jury and to the court the extent of his malice, and show if there 126 was a single fact which he could adduce, or if there was information gathered from any source whatever that was a foundation for one of his charges, he was compelled to say they were the imaginings of his own heart, and that, so far as any benefit of Dr. Smith, he knew of none.

Throughout this case, may it please the court, two facts are plainly evident: One is that Dr. Smith did not seek, and could not in any way whatever, by any one of these acts, and consequently it appears that Mr. Bartlett never took those goods; that he was not one whose acts were essential to the furtherence of any alleged conspiracy. But he did present a bill—and that is all that is shown—upon which he had paid the Paper Stock Disinfecting Company for their work, but for the services of the lighters of the New York Lighterage Company subsequent to these transactions. And I call your honor's attention to the fact that it is also in evidence that the inducement and the actual transfer of that custody was by and through these exhibits which your honor has had in your hand, with which neither of the defendants have had anything to do whatever, from the custom-house authorities in the port of New York. And further, that they were then acting under the authority of the United States Government at Washington.

And we shall claim, may it please the court, and it will be my pleasure to show your honor that not only was there authority for that on the part of the Government, but we say now, and I ask attention to this point, that, whether or not it was legal, it was actual, and there is no power here (and I can probably show there is no power elsewhere) to have taken those goods from the custom-house on the 9th of June, nor until they were delivered, and these receipts had been given at the dates designated, by the custom-house officials, under the authority of the Secretary of the Treasury.

127 Now, sir, there was the Secretary of the Treasury acting under the authority of his office, and the United States statutes have commanded the officials to obey those directions in regard to the health laws; and whether mistaken or not, their hands were upon them, with which neither of the defendants had aught to do. So, may it please your honor, we maintain that there is no evidence in this case of a conspiracy, no evidence of any combination between these defendants, and adding to the strength of our

position is the declaration and admission of the defendants themselves in the two suits which were brought. And upon the 15th and 18th of June, 1885, they maintain, and until their actions are dismissed or settled, that those goods are in the hands of Collector Robertson and in the hands of the Paper Stock Disinfecting Company, and it is they that refuse the goods to them. But they do not allege that they have offered to pay for any services, and it is followed by a replevin suit, against whom? against defendant Bartlett, and setting up that the goods which one day before, or two days before, they have alleged, were in Collector Robertson's hands, Mr. Bartlett is detaining and controlling. And then you have the correspondence between the collector here in New York and the Treasury Department at Washington, declaring that this suit is brought, that those goods have been sent to warehouse by order of the Secretary of the Treasury to be disinfected, and disinfection was ordered pursuant to those instructions; and the United States Government, acting by one of its higher officials, requires the United States attorney to appear and defend the case. Now, sir, in that case Mr. Bartlett does not appear. In the other case, which is subsequent to the issue of this so-called permit, Dr. Smith does not appear, and whatever acts these are, they are acts of these single parties, neither of them a party to this suit. That is in the first case. Mr. Bartlett appears only in the second.

128 So, there are their own admissions and declarations. Now, sir, can it be said that what did not exist until the execution and report upon these orders of the custom-house, as declared by the plaintiffs themselves, existed when this plaintiff swore to this complaint out of his own head? I think not, sir. At all events, you may search in vain through this evidence for a single fact of conspiracy or combination.

And one thing further, your honor will not find that any benefit came to the defendant Smith. On the contrary, it appears by the declarations which your honor has admitted, that he talked about his responsibility, and that was the only answer that could be got from him. When interested persons went to him and asked him to interfere on one side or the other, he said, "I have my office to perform; I will discharge its duties upon my responsibility." And that that discharge was in connection with the results of conferences with sanitary officers. His justification was well founded, and they have not ventured to impugn the wisdom of that decision so far as the opinion of the sanitary authorities or conferences could be invoked.

And more than all, your honor had your attention called yesterday to the fact that he has been urged to this very course by these signatures in these petitions, of which I said to your honor yesterday I would present you the originals of over four hundred of the most learned and distinguished physicians of the city of New York, and over two hundred physicians of the city of Brooklyn, calling upon him to discharge that very duty which the conferences invited by the Secretary of the Treasury, in December, 1884, had called upon the United States Government and all sanitary officers

to perform; which the Fifth Avenue Hotel conferences in April,
1883, had required them to still further observe. And, your honor
will observe that there is evidence that, at this time, there
129 was what was called by some of the witnesses a cholera
scare, and the proven exportations of every man who could
put a single bar or stop to the importation of great danger to this
port was insisted upon.

Now, sir, the question of Dr. Smith's motives are of no importance here, except so far as a matter of opinion, and for the justification; and we need not wait for that. I hold in my hand the testimonials issued to him.

Mr. Cochran: I object to that; that is not proper on motion to dismiss.

Mr. Prentice: I say that the shipping merchants of New York
have for years united in their praise of Dr. Smith's wise and beneficient measures. We do not need it for that purpose, I say. And
yet the courts have expressly laid down the rule that in an action
of this kind there is no responsibility in a civil action for the official
acts of a public officer. Now, I will call your honor's attention particularly to the fact that their argument has greatly proceeded and
great stress has been laid upon the fact that the circular of June
10th was issued by the Treasury Department; and while they concede, as by their witness Mr. Smith, that prior to that time, as Secretary Fairchild held, the whole control and management of that
business in the port of New York was by the United States officials;
yet by the decision of June 10, 1885, it was remanded—to what?
to the decision of the health officer of the port of New York. Decision as to the advisability of what? of enforcing and maintaining
the rule which had been adopted in pursuance of the advice of the
sanitary conferences; that which was the subject and basis of the
circular of December 22, 1884. And I call your honor's attention
to the fact that even so late as July 17, 1885, the Secretary of State
directs United States consular officers all over the world to
130 see to it that one of these processes, one of the very processes
in question in this suit, should be secured for the disinfection
of rags either abroad or here.

The Court: Mr. Prentice, the foundation of this action, as I understand it, is that the plaintiffs being the owners of these rags, the two defendants conspired together for the purpose of preventing them from getting their goods, compelling them to send them to Bartlett's stores, there to be treated by this process. Now, this case of Gleason is upon the theory that the action was one for money had and received, not the old common-law action for a tort, a wrong. But in this case there must be evidence to sustain that combination I agree; that the object of Doctor Smith was not in the performance of his duty, because I believe if it was an act in the proper performance of his duties, the carrying out the very large powers necessarily conferred upon him to protect the health of the port of New York, no cause of action does or can exist, no matter how much damage was occasioned by it. If it was in the fair performance of his duties, he cannot be held liable. But the only question

is, whether or not there is evidence here enough to show that these defendants conspired together for the purpose of preventing the plaintiffs from getting their goods. Now, that is all there is in this case—whether there is evidence enough to show that there was such a combination, evidence enough for the jury to infer that combination from the facts that have been proven here. So that there is enough to say that I should not take the question away from the jury. It is not material here on that theory upon which the action is brought, as I understand it, whether or not the United States authorities had and kept possession of the goods. The question is, did Bartlett and Smith conspire to deliver the goods to Bartlett that he might keep them for his own purposes. That is all there is in this case—whether from the facts proven the jury can in-
131 fer the existence of that agreement, combination and conspiracy.

Mr. Prentice: Then may it please the court, if I understand the rule aright, it is necessary in this case to show a conspiracy and combination?

The Court: It is, either by express evidence or by the proof of facts from which, as they stand unexplained, the jury can infer that the parties did agree for the purpose of getting possession of the goods and not for the purpose of carrying out the law.

Mr. Prentice: I am thankful to your honor for that clear exposition of so much of the law.

The Court: That is the only rule upon which the action can under any circumstances be maintained.

Mr. Cochran: I concede the entire propriety of your honor's decision.

Mr. Prentice: Then we ask your honor to rule upon this: that if these goods were in the possession of the Paper Stock Disinfecting Company under those orders of the custom-house, and the disinfection was begun and the lighterage was incurred pursuant to those orders that the plaintiffs could not have claimed their goods without paying the charges for those services that had been rendered, so far as these goods were concerned, and they, themselves, have said they never tendered such payment.

The Court: But if the defendants, themselves, in consequence of their conspiracy, their combining together for the purpose of preventing the plaintiffs from getting the goods, but in compelling them to be delivered to Mr. Bartlett's stores, it does not relieve the defendants from liability, because they were subsequently given to other people to do with. It was the original conspiracy to keep the goods away from the plaintiffs upon which the action must depend, if it depends at all. I am simply telling you the view I take of it.

132 Mr. Prentice: I desire to call your honor's attention to the fact that it was on the 3d of June these goods were sent to general orders by the custom-house, and on the 9th of June they were sent to Barlett's stores South for disinfection, and that the officer here instructed to make returns hereof. And, therefore, whatever the cost, the defendants can be held responsible, for under

your honor's rule — could not have been before the 15th or 17th of June when this permit was obtained, and at the time their suits were in progress in Brooklyn or New York. The goods were there for disinfection, at any rate on the 10th of June, under custom-house) orders, and immediately that was done services had been rendered.

The Court: But it was the act of sending it there which the plaintiffs claim was wrong, to prevent their goods from being landed from the vessel at the time the vessel first arrived here; that is their charge.

Mr. Prentice: Now, sir, our point is, that there is not a scintilla of evidence——

The Court (interposing): Now you are coming right to the point.

Mr. Prentice (continuing): There is not a scintilla of evidence that the collector of the port was influenced in the slightest degree in making this order of June 9th by the act of either of the defendants, and certainly not by the act of Doctor Smith. And I call your honor's attention, particularly to the documentary evidence which is in the case, showing that even up to the 12th of June the collector reports to the Secretary of the Treasury that it is pursuant to his directions that he has sent those goods for disinfection, and the report is there made. And the Secretary of the Treasury in his article directs the circular of June 10th to be distributed and the warehouses to be notified, and it is subsequent to that period that they go into court and claim that it is the collector that is holding those goods. And then comes the Secretary
133 of the Treasury, their witness, who testifies that at this time the United States officers were obeying the instructions of the United States Treasury Department, not only by these letters, but by that circular of December 22d.

Now, sir, if Doctor Smith had been the worst man, as he is the better man, his hand and voice could not have affected that in the slightest degree; at all events, it appears—and they have laid stress upon this point—that on the 5th of June, preliminary to the issue of this circular, the Secretary of the Treasury had directed the collector to ask for his views. The letter of June 6th is sent to the collector before a decision is reached, is transferred to Washington, is acted upon by the Secretary of the Treasury on the 12th of June. And that letter is what? It gives the reason in Doctor Smith's mind for not advising that a rule be changed. That is all. And it is then that the collector reports that not having been advised by Doctor Smith in his letter of June 6th to change the rule, he has obeyed the instructions of the Secretary and sent those goods for disinfection.

Now, that is their evidence, their witness, and the point that we make is that whether your honor should be tempted to hold with the distinguished counsel and with the subsequent views of the Treasury Department that they may have been exceeding their authority or not, the control was actual; it was physical. And therefore, I beg your honor will indulge me for one moment, when I call your attention to the fact that the courts have repeatedly held

that the motives of a public officer are of no importance in a case like this. It is not a question of good faith. I read to your honor a case in 3 Denio of Weaver *vs.* Dieffenhofer and others, which was an action against assessors for their wrongful action in determining the value of property and laying a tax. And the court there lays down this general rule: “I prefer to place my decision,”
134 says the chief justice, “on the broad ground that no public
officer is responsible in a civil suit for a judicial determination, however erroneous it may be, and however malicious the motive which produced it. Such acts, when corrupt, may be punished criminally, but the law will not allow malice and corruption to be charged in a civil suit against such an officer for for what he does in the performance of a judicial duty.” And that case is cited and approved in the case of The East River Light Company *vs.* Delaney, respondent, 93 N. Y., page 557, in which Judge Danforth gives the opinion: “And where a special charge is made in the brief of Mr. Nelson that willful and corrupt action of the defendants entitles the plaintiff to maintain an action against them for damages which were the direct result thereof to the plaintiffs. Now, if that is not the contention of the learned counsel in this case, then my head is thicker than he has insinuated. The principle upon which the rule rests (that is that a public officer is not responsible in a civil action) was applied by the late supreme court in the case of Weaver *vs.* Dieffenhofer 3 Denio, 117, and sustained by a great array of authorities, to which many later ones might be added, but none to the contrary. It is not denied that the law is well settled in that case, but the learned counsel for the appellant denies the application of the facts before us.” And in the case of Daily *vs.* Conner, it was held, where the plaintiff offered to prove a conspiracy between attachment creditors, that the fact that there was a conspiracy to do what the law authorizes did not affect the legality of the act. Now this is what the law authorizes. However mistaken they might have been upon that point, their position is this, that it was the decision of Doctor Smith which determined the collector in his action. That was a decision upon those facts, and the courts have gone very far in determining what is a judicial determination. Therefore we say that there are no infer-
135 ences to be drawn in this case. But they have gone on
and proved how solid the ground was upon which such determination as Doctor Smith had reached might have been based. And your honor has very well stated a rule of law which must cover all cases of this kind, and which it has been my experience to see vindicated by the supreme court on more than one occasion, and that is, because New York officials might shut their eyes to an injury which they permitted to escape them, and to be inflicted upon a different part of the country, it was no excuse that they neglected the duty which was imposed upon them at this great distributing agency of all the merchandise of the whole country, the port of New York. Ten years ago I tried a case where the defense to a breach of contract was removal of a nuisance from New York, and there the court held that New York could not make itself the

occasion and subject of injury to the neighboring districts and to other people. Why, it would seem as though there was a principle of law that it belongs to our profession to maintain in its purity and integrity.

And so we say, may it please the court, that not only under your honor's rule when we have shown that there must be a conspiracy, there is no evidence of conspiracy, but there was no offer; they have not put themselves in a position to take the goods, even if there was no authority to disinfect them. But, beyond all that, that one essential element here, is to hold Dr. Smith by some act, of which there is not even a suggestion, and they, themselves have disclaimed all knowledge. Now, it was the act of the United States officials. I have already called your honor's attention, and your honor has pursued with some interest this quarantine law, and were it not in existence, were it simply the exercise of high discretionary power, and such as I think was invoked by the Secre-
tary of the Treasury in reference to Dr. Smith, and upon
136 which that letter of June 6th was based, he was speaking
then only as an advisory officer to the United States, that
was their act. Those rags never passed quarantine; if they had, the law permits him to recall them at any time, if it was found that they were dangerous. But they were excepted. And why? They were excepted, because he knew and every one here knew that the United States Government was occasioning the importation of merchandise of a dangerous character, and I need not call your honor's attention to the fact, that for more than six years, the United States Government has found it necessary to interfere more or less, in what has been heretofore called police measures for the prevention of the introduction of dangerous diseases into the country, to raise a large fund for the National Board of Health. The consular officers have been directed to send in any information, and it has stopped injuries by enforcing the custom-house authority. And in a late case in the United States Reports, the authority of the United States Government to take such action is maintained and explained. In the case of Glo-cester Ferry Company, 1 Pennsylvania, 114, U. S., especially at page 215, "sometimes indeed!" as Mr. Cooley remarks, "the line of distinction between what may be considered an interference with commerce, and what is a legitimate police regulation, is exceedingly dim and shadowy. The court has heretofore discussed the fact that all commerce is within the control of the Congress of the United States whenever it chooses to use the power!" And it then sets out the fact that it has been usual also to allow local authorities to enforce sanitary regulation, although they may interfere somewhat with acts of Congress. But the court goes on to say "it has no doubt that Congress has the power to go beyond the general regulations of Congress, which it is the custom to establish, and to descend to
the most minute direction, if it shall be deemed advisable."
137 * * * Cooley's constitutional limitations goes on still
further upon that doctrine.

Now, sir, Congress has not been remiss in prescribing regulations. So that at least, the power was given, and the lawful authority.

I have argued heretofore the power was actual, but I can show to your honor's satisfaction, that it was legal. But, even then I do this simply because such stress has been laid upon that point, which seems to be the vital one to the counsel for the plaintiffs. Under the Revised Statutes, section 2207 and section 2867, and various other sections, full directions and minute detail are given as to what shall be done in this respect In section 2872, '3 and '4, further regulations for these goods are prescribed. Your honor has already seen that Judge Robertson, when collector of the port, cites that his action, I think, in regard to the Battaglia, was taken under section 2880, which allows that distribution. We then come further to section 4792, U. S. Revised Statutes, in which the custom-house officials and the United States authorities are directed to enforce quarantine and sanitary regulations. And then, the particular officers of the custom-house are subject to this direction of Congress, under that section. "All such officers of the United States shall faithfully, in the execution of such quarantine and health laws, according to their respective powers, and within their respective precincts, and as they shall be directed from time to time by the Secretary of the Treasury," execute and perform quarantine and sanitary duties. So the Secretary of the Treasury is given the power to issue directions to them.

The Court: That hardly follows. Custom-house officers are directed to follow the Secretary of the Treasury. But his power to issue orders must be derived from some other power given to him. If the health officer of the port had stated that these goods were
not to be discharged the custom-house officers would have
138 authority under that to refuse to allow them to be discharged.
But what I wanted to know was whether your contention was that that section itself gave the Secretary of the Treasury the power, under the guise of sanitary regulations, to substantially close the port?

Mr. Prentice: That power has been exercised, and was, in November, 1884, by the Secretary of the Treasury in regard to rags. And I say this, sir, that it does actually do so. I say that the custom officials, under such directions in that statute, would be justified, when the circular of December 22d was in existence, to follow the direction of the United States Treasury proper.

The Court: So far as the officers are concerned of course that would be so here.

Mr. Prentice: May it please your honor, I am only claiming, first, as I said before, that the actual control was there; and, secondly, that the legal title, whether rightfully exercised or not, was there in the Treasury officials.

Now, by the State laws, in addition to the discretionary authority which is conferred upon every officer occupying such a position as a health officer of the port, certain specific duties were laid; and I desire to call your attention to a fact which does appear in evidence, that this same gentleman was inclined to dispute, is not within his knowledge, but was proved by other witnesses, that Robbins' reef is within the quarantine jurisdiction; and your honor, perhaps, is aware, as everybody else but the learned gentleman is, that the disinfection and lighterage of cargo for years has been at Robbins' reef and about it.

Now, sir, that particular subject of lighterage and the employment of men by such services is to be found in the 29th section of the sanitary law, and it is within the knowledge of the court probably that it is only four or five years ago when almost every vessel coming into the port of New York was compelled to break cargo down to quarantine, and the lighterage charges each year
139 ran up to hundreds of thousands of dollars. And who were they changed by, and vessels allowed to proceed without discharging cargo down there? It requires no discussion to show your honor that to lighter vessels down below and break the cargo there is a burden. But that power is given to the health officers of the State.

Now, sir, under section 12, rags are the merchandise which he is bound to scrutinize, and which, under the State law, if there was no United States regulations, are subject to quarantine. They certainly are submitted to very particular inquiry.

The Court: Where is there any provision of law that gives the gentlemen engaged in disinfecting these goods any lien upon the goods? Do you claim there is any?

Mr. Prentice: Yes, sir; there is a lien for services rendered.

The Court: Do you claim it under that?

Mr. Goodrich: As I understand it, for all charges of quarantine a lien is given by the statute under section 13.

Mr. Prentice: The services were not rendered under Mr. Bartlett's direction.

The Court: Then where does he get any lien?

Mr. Prentice: Isn't there a common-law lien? If these goods are sent to him to have work performed has he not a lien upon those goods?

The Court: When sent by the owners of them, yes.

Mr. Goodrich: No matter whom sent by so long as they are sent under lawful authority.

The Court: I think we are getting away some distance from the only question here, because as to the amount of damages that is another question. The only question here is whether there is sufficient evidence to show that there was any combination or conspiracy.

Mr. Prentice: I shall occupy your attention but a moment
140 longer. They settled their replevin suit, sir, because there was a lien. Now, we maintain that when the power was given to the health officer to choose the method of disinfection and purification, that there was but one choice for him as to the place. Your honor will remember that in a subsequent letter, in June or July, 1885, the Secretary of the Treasury reminds the collector that when the designation of the Baltic stores was made the health officer must designate a place where the purification shall be made, and

it shall be made sufficient, and the collector shall report upon it. Now, having chosen, so far as he could a method of purification, he could only send the goods in the first place to Baltic stores, if he could send them at all. He did not send them. He says they are permitted to be discharged at Baltic stores for disinfection. Whether that had been modified or not I don't know. It is in proof that that was the only place that the United States authorities sanctioned then. That was the warehouse designated by the Treasury Department. They were in the hands of the collector. He was controlling them, and the Baltic stores was designated. But, secondly, if there was any independent action on his part, having been given the choice of the method of purification, there was but one place where this No. 4 of the Treasury circular, this process, could be performed in the port of New York. Now, the defendants might have used any one of the other three processes. But they didn't propose to disinfect the goods. Now, that disinfection could only be done at the Baltic stores, until the health officer of Brooklyn refused to have it done there and it went to Robbins' reef, within quarantine limits. It is a significant fact that Robbins' reef was not chosen, in the first place, under that law; and, as a letter of their witness Raymond shows, it was not in effect until July. And why did the
health officer of Brooklyn send those rags away? Because
141 they were so offensive that he wouldn't have them in Brooklyn——

The Court: There is no such evidence. He said they were examined in that warehouse. The rags all stayed there in the Baltic stores.

Mr. Prentice: Well, perhaps I was in error about that.

The Court: They were kept there until the odor disappeared. That is not material anyway.

Mr. Prentice: He was determining the question. Now, we say in conclusion, to sum up my motion briefly:

That the plaintiffs have failed to prove facts sufficient to sustain a cause of action against the defendants.

I. The first allegation of the complaint is a conspiracy and combination between Health Officer Smith and the other defendants. Their second allegation is that Health Officer Smith under color of his office in furtherance of said conspiracy and combination wrongfully caused the rags of the defendants, between June 5 and 17, 1885, to be taken from the vessels and transferred to the place of business of the defendant Bartlett. The third allegation is that by reason of said conspiracy the rags were taken by Bartlett & Co. and kept from the 5th of June to 1st October, 1885. The fourth allegation is that by reason of said conspiracy the rags were damaged by the process of disinfection used and that the defendants refused to deliver the rags to the plaintiffs until the charges for the transfer and disinfection were paid. And fifth, that by reason of said wrongful acts, *i. e.* the acts of this conspiracy above set forth, the plaintiffs were put to and suffered damage $15,000.

Each and every one of these allegations were denied by the answers and the defendant Smith alleges that all his acts were in

the necessary and proper performance of his official duty,
142 and that the control and monopoly of disinfection was not given to any one.

The defendants Bartlett further aver that the alleged detention of these rags was the subject of other suits and ended by the settlement of those suits by the plaintiffs and their payment of the proper and necessary charges.

The plaintiffs' proof shows that there was no damage to the rags by the disinfection, which allegation may be dismissed. And in respect to the other allegations the following points are made by the defendants.

I. That there is no evidence of any conspiracy or combination between Bartlett and Smith in respect to these rags.

II. There is no evidence of any benefit, pecuniary or otherwise to defendant Smith from the performance of his official duty in the premises, except from the consciousness of right action.

III. There is no evidence that defendant Bartlett had any part in the alleged taking of these goods or in the disinfection; for the disinfection was by the disinfecting company.

IV. Any damages if such there were, as the proof now stands were the result of the delay of the plaintiffs in obtaining the permit from the United States custom-house authorities and in paying the charges on their goods.

V. That the proof of a conspiracy between the defendants is necessary in this case to sustain the allegations of the complaint, which differs from the case in 7 Hill, where the conspiracy was held out to be the foundation of the action. The damages alleged could not have been sustained as they are charged by the single action of any of the defendants. Under the case in 78 N. Y., 503, the
143 New York Guarantee and Indemnity Co. *v.* Gleason, the evidence could not be sufficient to hold the defendant Smith liable in the absence of proof that he was to share in the proceeds, and also that he was a principal.

Under the case of the E. R. Gas Light Co. *v.* Donnelly, 93 N. Y., 557, the rule of law is maintained that no public officer is liable in a civil suit for a judicial determination, however wrong or erroneous or malicious it may be (cites 3 Den., 117).

VI. The physical control of these rags at the times alleged between the 30th May and the 17th June, whether it be held legal or not, was in the collector of the port of New York, by whom the evidence shows the rags were sent to the Baltic stores for disinfection. In the case of the Battaglia, the supervision of the United States Treasury officers was not relaxed, and the disinfection at Robbins' reef was approved by the Treasury Department. The documentary evidence and the orders show this, in addition to the acts of the defendants, which on admission and declarations on their part in the suits which they brought, the first is the collector and the Paper Stock Manufacturing Company, and the second the replevin suit. And the replevin suit was in issue after the date of the permit issued to the Battaglia for disinfection at Robbin's reef.

VII. The motives of the defendant Smith are not material, al-

though there is abundant evidence that this discretion was exercised in conformity with the best opinion of sanitary authorities at that time, of the necessity of disinfection for such rags. And moreover the plaintiffs' witness Fairchild testifies that the disinfection of rags was controlled by the custom-house authorities by the circular of December 22, 1884, and after June 10, by the same rule
when in reply to the Treasury Department the health officer
144 did not advise that the rule be relaxed. The health officer
had the power under the State laws, if the rags had been under his control at the times alleged, to choose the method of disinfection and particularly subjection to steam as specified in section 16 of act of April 29, 1883, as tried, and to order the displacement of merchandise and detain vessels and cargoes under section 15, and under section 12 rags were to be submitted to an obligatory quarantine; there was but one place in the port of New York where the process, which was No. 4 of the Treasury circular, and was that approved by the health officers in Congress, could be used. First at the Baltic stores, and after June 17th at Robbins' reef for two reasons (1) these were the places approved by the custom-house authorities who at this time had the actual control of the rags; (2) this was the only place where the process was in actual operation. The defendants perhaps could have chosen another mode of disinfection, but they have testified that they neither offered or intended to disinfect the rags. Section 22 commits question of purification of merchandise to the health officer, and limits the classes which may be admitted into the warehouses. There is no question of the right of the health officer to return to a place in quarantine vessels or merchandise in case of necessity in this direction, and when he has not discharged it. Section 29 places the lighterage in the control of the health officer, and section 32 prescribes the duty of masters of vessels to submit to these directions.

VIII. U. S. R. S., section 4792, supports the quarantine regulations, and directs the officers of the United States to faithfully aid in the execution of quarantine and health laws, as they shall be from time to time directed by the Secretary of the Treasury, and section 4793 prescribes that where under the quarantine laws there
is any prohibition, the cargo of the vessel may be unladen at
145 some other place within or near such destined point, and the
collector may grant his warrant or permit for unlading at some other place where such health laws permit.

It follows (1) therefore that the control and disinfection of these rags exercised by the United States authorities was not only actual, but lawful, and at all events the directions of the Secretary of the Treasury were required to be observed under the statute; (2) that the decision of the health officer as to these rags was within his discretionary authority, and so far as this case goes, was a judicial action for which he cannot be held liable in a civil suit.

The authority of the United States officers is supported by the reasoning of the Supreme Court of the United States in The Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S., pp. 214, 215.

The case should be dismissed as to all the defendants and as to the defendant Smith it must be held that he is not liable.

To hold either of the defendants conspiracy must be proved.

Bartlett had no part in taking the goods and he rendered services.

Smith's action was official in the exercise of a fair discretion and for it he is not liable in a civil suit.

Mr. Goodrich: If your honor pleases, in addition to the motion made by my friend, I make the further motion to dismiss upon the following grounds: This action is brought against Smith, Bartlett, Woodruff and Nitche, the last three being stated in the complaint to be partners.

I now move to dismiss the action as against all the defendants on the ground that no conspiracy is shown between Dr. Smith and all of the other defendants.

II. That no conspiracy is shown between Dr. Smith and the defendant Bartlett.

146 III. That no conspiracy is shown between Dr. Smith and the defendant Woodruff, and that Woodruff was neither a director or stockholder in the Paper Stock Disinfecting Company, as appears by the evidence of the plaintiff.

IV. That no conspiracy is shown between Dr. Smith and the defendant Nitche, and he was neither a director nor stockholder in the Paper Stock Disinfecting Company.

I repeat these motions to dismiss as to Woodruff on similar grounds and each of the grounds.

I repeat these motions to dismiss as to Nitche on similar grounds and each of the grounds.

The Court: I am disposed to agree with you as to the other two defendants Woodruff and Nitche. You need not argue that?

Mr. Goodrich: If that is granted that would seem to be the end of this case.

I make the further motion that the defendants Woodruff and Nitche are not to be held in this action because no knowledge is brought home to them of any conspiracy between Dr. Smith and Bartlett, if conspiracy is shown to have existed.

That it is not proven that the disinfecting work was done by E. B. Bartlett & Company.

VI. That it is proven that the disinfecting work was done by the Paper Stock Disinfecting Company.

VII. That it is not shown that Dr. Smith was actuated by any corrupt motives, or received consideration therefor.

VIII. On the ground that it is proven that the rags were ordered by Collector Robertson to the Baltic stores for disinfecting under the order of the Treasury Department of December 22, 1884, and that the rags were in the possession of the collector at the time alleged.

147 IX. That it is not proven that E. B. Bartlett & Company ever received any profit from or through the company as dividends upon its stock or otherwise.

Now, let me add a single word upon this question of conspiracy, because, aside from the question which I just raised, your honor is evidently holding in your mind the single question in this case, upon which, if we rest now, we should be compelled to go to the jury, and that is the question, whether there is sufficient evidence to justify the extravagant allegations of the complaint.

As I remember the testimony—I have only that of Tuesday from the stenographer—Mr. Bartlett never appeared upon the scene until the 4th or 5th of June at the Treasury Department at Washington. It, therefore, goes without saying, inasmuch as the rags arrived here on the 30th of May, that it is the first instance where he appears in any connection with the rags by the Vigilant, or the Battaglia. Now, what does he do? "What was the subject of the conversation? A. We wanted the Secretary to allow us to enter the rags, and presented the log book * * * and unless these rags were sent there Bartlett would lose money."

The next occasion of Mr. Bartlett's presence seems to have been in the health office in Brooklyn. "What was said there? A. Mr. Bartlett said he wanted the lighters unloaded * * * and he was obliged to allow them to land." Now, as I remember the testimony—and I believe I am stating it with accuracy, subject to my friend's correction—that is absolutely all the evidence that makes Mr. Bartlett an actor in regard to the rags on the Vigilante.

Mr. Cochran: We have also his appearance in the injunction suit.

Mr. Goodrich: I will come to that presently. I am talking now only of the appearance Mr. Bartlett made before any official in re-
148 gard to these rags. My friend says that he appeared—which
the record disputes—in the injunction suit which Lockwood brought, against whom? Against Robertson, collector, and as an individual, and against the Paper Stock Disinfecting Company, of which Mr. Bartlett was a director and a stockholder. He does not appear in that case, but he makes an affidavit, which is used, and the court decided the action of Mr. Bartlett proper in making that affidavit. Up to this time where is the corrupt conspiracy of Mr. Bartlett with Dr. Smith? Where does he appear next? In the refusing to surrender the rags when the replevin suit is instituted. It does not appear that any demand was made for those rags until that replevin suit was commenced.

Now, did Mr. Bartlett do an illegal or a legal act? And that brings us to the question which your honor has called attention to. The quarantine laws, section 30, provide for the rendition of such services as was rendered to these rags.

The Court: Mr. Goodrich, this whole act seems to me to clearly imply the detention of the goods at quarantine, and the act by the public officers of the State in their disinfecting them, and for that purpose they are given a lien. There is no authority here that I can see authorizing the health officer to send these goods to private persons to perform services upon them, and give those private persons a lien and a right to detain goods.

Mr. Goodrich: May I interrogate your honor?

The Court: Yes.

Mr. Goodrich: Does your honor hold that the health officer must do these services with his own hand?

The Court: Yes, sir; or his employees. Those are the words of the act, as I read it.

Mr. Goodrich: Your honor will find at section 57 the negative of that proposition, when it says that the several liens which have been provided for by sections 30 and 31 may be enforced in
149 the same manner as the act of 1862, &c., and the person or persons to whom said expenses and charges, for which said liens are created, shall be payable, shall be deemed creditors of the masters, owners, and consignees of the vessel, or the merchandise respectively. There is no provision of this statute which required the quarantine commissioners or the health officer to do these services with their or his own hand. He may employ other persons to do these services, and those persons have a lien upon the merchandise.

The Court: That is what I ask Mr. Prentice—whether he claimed that the Bartletts here were Dr. Smith's employees.

Mr. Goodrich: I do not say that. But the statute says that the persons to whom the charges are due shall be creditors of the merchandise with their lien upon it. Shall the health officer of this port establish a stevedore establishment, a towing establishment, a disinfecting establishment? No; he may employ persons to do these things, and the statute gives those persons a lien. I claim that the Bartletts are creditors of the merchandise.

The Court: Then, if they are not employees of the health officer they have no claim or lien under this statute.

Mr. Prentice: I desire to except to that ruling of your honor.

The Court: I have made no ruling yet.

Mr. Goodrich: I claim that the detention of these goods by the Bartletts was legal, because they had a lien, and the statute gives a lien upon merchandise to the person who has done the work.

The Court: I would like to know under what authority you get any lien on these goods for services rendered because the United States officers ordered them over to that place.

Mr. Goodrich: I am speaking now of storage and lighterage charges, and not disinfection, as under the authority of the United States. If, in other words, they had a lien for disinfection,
150 there was no right to demand the goods. If there was a lien for storage, they had a lien there; and although they may have overdemanded the amount due, their claim was still proper that they should hold the goods until their lien for whichever it was, storage, lightering or disinfecting, should have been paid. There is no pretension here that pay was ever tendered for either of these things.

Now, I contend that where four parties are alleged to be parties to a conspiracy, the conspiracy must be proven as to all four of them; and I make that claim under authority of the case of Place *v.* Minster, 65 N. Y.

Mr. Cochran: The case of Betz *v.* Bauer, the general term have decided, which is a much later case.

Mr. Goodrich: The court of appeals is higher authority.

The Court: Now, Mr. Cochran, the only question that I care to hear you upon is as to whether there is any evidence that there was any conspiracy between Dr. Smith and Mr. Bartlett.

Mr. Cochran: These rags were non-dutiable. The plaintiffs had a right to the possession of them the moment the vessel arrived here. That is a proposition which everybody can see. The lien of bonded warehouses is only upon dutiable goods, when they are ordered to the warehouse until the charges have been paid. Now, in this case there was no pretense that there was any duty. Yet the goods were held. They were held under the cover of a piece of paper from the custom-house, and it is true that the collector's signature is upon it. But we claim that that paper should never have been issued, and we charge Dr. Smith with having caused it to be issued, and we charge that Mr. Bartlett reaped the benefit of it.

Now, what facts have we? Mr. McClintock went down to Washington and met there Mr. Bartlett, and Mr. W. Scott Smith, and another philanthropist named Silas B. Dutcher, who of 151 course was entirely blind to the prospective profits of E. B. Bartlett & Co. They charged there that these goods were infected. That was what they charged first; and then they charged that they were not loaded before the first of January. And your honor will remember, that there is no pretence that these goods could have been moved for any purpose if they were loaded before the first of January. Now, these gentlemen go before the Secretary of the Treasury and make their representations there. Bartlett, without any concern whatever in the merchandise, appears there and ventilates his alarm for the public health, although the less godly W. Scott Smith states that Bartlett is filled with apprehension lest he shall lose the expense he has been put to in establishing this disinfecting concern.

Now, the Secretary of the Treasurer telegraphed to the collector of the port to submit everything to the health officer and be governed by him. That act of the Secretary of the Treasury, if it be carried out, placed the whole responsibility for this transaction upon Dr. Smith, if Dr. Smith chose to assume it. The question for your honor to consider is: What part did Smith have in this? Did he have enough part in it to charge him with responsibility? On June 5th the telegram was sent. On June 8th Collector Robertson communicated by letter to the Secretary of the Treasury his decision, wherein he states that he will order the goods when landed to be disinfected. Following that, on the very next day, comes this order that directs the goods to be taken to Bartlett's stores for disinfection. Now, that action of the collector was taken when he was governed by the conclusions of the person to whom the matter was referred by the Secretary of the Treasury, upon whose action it depended, and who took the action set forth here in this letter which we have in evidence.

152 Now, there is the act of the health officer that has caused all this trouble. Was that action taken in good faith? The contention of our adversaries is of an elusive character. At one time they declared that the custom-house is responsible. At

another time they declare that Dr. Smith was a judicial officer, and therefore not liable to attack in a court of justice. If that contention be true, then Dr. Smith was simply a ministerial officer, and, as a ministerial officer, without any jurisdiction of any kind to assail us, except when it is acting according to the strict letter of the statute. All the facts and circumstances here show that the section of the Revised Statutes gives the Secretary of the Treasury power to issue regulations in aid of the quarantine authorities. So that whatever action the custom-house took was taken, so far as it was lawful, in aid of the quarantine authorities; and therefore the quarantine authority was the moving power that prevented our obtaining this paper, even if we didn't have the positive evidence that appears in all the documents and testimony.

Now, sir, if this power be in the health officer, legally, it is a power that must be exercised with the utmost and strictest obedience to the spirit of justice as well as to the letter of the law. If there be power to arrest merchants at the very threshold of this port, in these sections that have been read by the counsel on the other side, it is a power that is as great as any ever committed to any public officer in the world, and if he damages us he has to show that he acted in good faith or at least he has got to answer the presumption of bad faith that arises from the proof of his knowledge that this interference with our cargo was unnecessary. We have all the proof here, which I need not refer to in detail, which shows, among other things, that Dr. Smith, having with one hand declared to the collector of the port that these goods should be disinfected as a
necessary precaution, declares with the other, when it is
153 necessary to get them into Bartlett's clutches, that they are
free from infection. If they were free from infection, by
what right did he place his hands upon them?

But, even if that power existed, if the extraordinary power existed that he should still break the bulk of the cargo up, he must proceed according to the strict rules of law. Are we not bound to have our goods treated according to law? Shall the port of New York be closed at every quarter except at the wharf that is in front of Mr. Bartlett's store? We are taxed five dollars per ton upon rags worth about twenty dollars—twenty-five per cent. of the total value of them—for a nominal process of disinfection, which, according to the evidence here, has only been applied to about twenty per cent. of the quantity of the goods. And the cause that made that extortion possible is this document from the custom-house, which was brought about by the machinations and misrepresentations of Dr. Smith at a time when he knew and testified to before a brother officer that the goods themselves were free from infection.

Now, under the doctrine of the court of appeals it has been held that where a public officer chooses to exercise this right, which falls little short of confiscation, he shall act according to the due process of law, and we say that there is no law here that authorized Dr. Smith to send these goods to the Baltic stores, but even if there was, we maintain that these goods were free from infection, and that Dr. Smith knew they were free, and so testified to Dr. Raymond. Now, we claim that with all those facts before him he is responsible for all evil that flows from his act. Not only is this a case which will go to the jury, as I believe, with your honor's direction, that an extortion has been practiced upon us, but it will go down in the history of this country without a parallel.

Suppose Dr. Smith had not interfered against us, would there
have been any trouble about rescuing our goods? On what
154 does this blackmail depend? On the paper of the custom-
house. On what does that depend? On the representations
of Dr. Smith, as shown by Collector Robertson, and the testimony of the Secretary of the Treasury. Were those made in good faith? Let the testimony of Dr. Raymond answer.

Now, I do not think it is necessary to argue that any further. These are the plain facts upon which this case rests. If it had not been for Dr. Smith, we would not have been subject to this extortion, and defeated in every action that we took. Much has been attempted to have been made in regard to admissions that these plaintiffs are said to have made in the injunction and replevin suit.

The Court: The question is back of that.

Mr. Cochran: They were deprived of that very remedy by these representations and acts of Dr. Smith. They didn't seek damages then. They sought their goods. The judge denied their motion there upon the ground that they had an ample remedy by an action at law, and that action we have now brought, and we stand upon it here.

There is one thing your honor has intimated, and that is you are inclined to agree with Mr. Goodrich in regard to the non-liability of the other two partners in this firm of E. B. Bartlett & Co. As to that we have only to submit to your honor the fact that the firm paper and the firm name has been used for the purpose of collecting this unlawful toll from us, and that as such it rests with them to relieve themselves from the imputation that springs from the use of their firm name for the purpose of extortion. In a civil action of this character every beneficiary of a wrong is responsible. The firm of Bartlett & Co. reaped the fruits of this toll. We say it is incumbent upon those whom the law presumes to be the beneficiaries of the profits to show that they had no knowledge of it and reap none of the profits. There is no inten-
tion to hold anybody here who is not actually respon-
155 sible. I don't wish to be understood as saying one word
that will discredit the wisdom of the Treasury regulations
preventing the importation of goods that are infected, or that come from an infected district; but I do protest against any attempt to prostitute a healthy public sentiment which was aroused in defense of the public health to the purposes of blackmail on the part of Dutcher, Bartlett, Smith and Platt, and the gang that has become infamous as the quarantine ring in this State. I have mentioned their names simply because Mr. Prentice has thought proper to pronounce an encomium upon his client. It was needed, because I

think since he took office it is the first he ever heard: but it has not been justified by his practices, it ought not to be justified by any decision of your honor that will take from this jury the right to pass upon the moral responsibility of the officer who has sent our merchandise into a store, where we have been compelled to pay blackmail to a common gang levying the tribute of blackmail, as it has always been levied, under the guise and appearance of law.

The Court: I will decide this tomorrow morning.

Fifth day.

The Court: In considering this question, I have come to the conclusion that there is enough here to put the defendants upon their proof. In the first place, I think there is no authority under the statutes, either in the law of this State or of the United States, for sending goods of this kind to a private individual to be treated. In the second place, it appears—and I think, too, satisfactorily—that the act of the collector was induced by Dr. Smith, and that the Bartletts were instrumental in opposing every attempt of the plaintiffs to get possession of their goods; and that in consequence 156 of the action of the two the Bartletts were successful in getting the goods. Under those circumstances it seems to me there is enough, anyhow, to compel the defendants to justify, or to put them upon their proof.

I do not say, if the defendants make out a good case, but what there would then be enough to warrant me in directing a verdict for the defendants.

As to the defendants Woodruff and Nitche, I agree with Mr. Goodrich that there is no cause of action made out against them; but, as I am going to take the evidence, I think it best to wait until the end of the case, and then I will direct a verdict.

Mr. Goodrich: Then, I don't except as to those two defendants. But as to the other motions, both those made by Mr. Prentice and those made by myself, I take an exception.

Mr. Prentice: I also except, on the part of Dr. Smith, to your honor's decision, and to the denial of the motion for nonsuit on each of the grounds stated. And, if I understand your honor aright, you hold that the action of the collector was induced by Dr. Smith in the letter of June 6th?

The Court: Yes, it appears there that it was referred to him, and that his report controlled the disposition that he made of those rags. The only question here is whether there was evidence of an unlawful conspiracy.

Mr. Prentice: I enter an exception to that part of your honor's ruling, which puts the defendants to proof because of the action of Dr. Smith in the letter of June 6th.

The Court: Of course, the only decision there is, is the decision denying your motion. As to the other points, the proper way to present them is in the form of requests to charge.

157 Mr. Goodrich: I think it is proper, in the interests of those two clients, Woodruff and Nitche, that I should also take an exception to your refusal to dismiss as to them at this time.

Counsel for defendants opened the case to the jury, and thereafter called as a witness—

Theodosius Barto, Jr., who being duly sworn, testified as follows:

Direct examination by defendants' counsel:

I am a merchant in the city of New York, and a dealer, among other things, in Japan rags.

Q. Is there any great variance in the quality of Japan rags, or are they pretty much alike?

A. They are pretty much of the same kind. The market value of Japan rags about the 1st of June, 1885, was about two cents a pound. We are pretty much the sole dealers in this port in Japan rags. In other words, most of them pass through our hands. We are brokers, so that the sales of Japan rags are substantially made wholly in our office. My impression is that the value on the 1st of June, was about two cents a pound. We made no sale in June, July or August of that year, nor do I know of any others. Disregarding the price of rags by the Vigilant, the market value of rags was in September, 1885, two cents. There was no change. In October it was from 2 cents to 2½, a little rise in October.

Cross-examination by plaintiffs' counsel:

I made sales of the rags on the Vigilant. I can't recall the names now of the persons to whom I sold. I think I sold to John L. Taylor for Messrs. Meyer & Co. My impression is that I got about 2⅝ cents a pound.

By the Court:

Q. When was that sale made?

A. My impression is that it was made several months before; this is prior to June.

158 Defendants' counsel moves to strike out the answer on the ground that, inasmuch as this was a conspiracy action, and plaintiffs had alleged no special damage, they couldn't go into that.

The Court: I hold that now, but I am allowing Mr. Cochran to examine this witness, who is an expert.

Counsel for defendants excepts.

To plaintiffs' counsel: At the time we sold these goods at 2⅝ cents per pound, which formed part of the cargo of the Vigilant, that was the ruling and market price, and they were sold as goods to arrive.

Q. How as to goods that were here at the time, which are known as "spot goods"?

A. Spot goods are goods on the spot here, in store, on the dock. I couldn't say positively, but I should judge about 2¾ or 2⅝ were the prices of spot goods. We made sales as high as three cents.

Q. At the time when these goods were in transit, you made a sale of the goods to arrive, which were part of this cargo, and which were substantially the same as the goods of Lockwood & McClintock, that they could be sold in the market for 2⅝ cents, and that was the standard price?

A. Yes, sir.

Counsel for defendants: I again renew my motion to strike out all the testimony which relates to a sale.

The Court: I overrule the objection.

Defendants' counsel excepts.

Q. Were those goods that you sold by the Vigilant taken and delivered at that price?

Same objection, ruling and exception.

A. My impression is that they were rejected.

159 EDWARD B. BARTLETT, one of the defendants, being duly sworn, testifies as follows:

Direct examination by counsel for defendants:

I am about forty-two years old, and I have been in business in the cities of New York and Brooklyn over twenty years. I first commenced the business of a storage warehouseman at Harbeck's stores in Brooklyn, which lie between Fulton and Wall street ferries. We succeeded C. L. & J. L. Colby, in whose employ I had been previously to that time. We opened an office in the city of New York for the conduct of that business. The day we commenced business the original firm was Bartlett & Green, which was succeeded by the firm of E. B. Bartlett & Co. The latter firm is composed of myself, Woodruff & Nitchie. When we originally succeeded Colby, we only had a lease of the Harbeck stores, with a frontage of about 300 feet. Since that time, our business has increased so that we have added other warehouses, and at the present time we have between four and five thousand feet of water front of store under lease. Our business is a pretty large business. I do not take any special supervision directed to any particular locality, as diverting from the whole. The Baltic store is in Baltic street, Brooklyn; bounded by Baltic street and Harrison street. I think there are three stores. It was a part of the Baltic stores which were subsequently occupied by the Paper Stock Disinfecting Company, one store, 200 feet square and two stories high. They did not afterwards occupy the whole of the building; only the better part of the first and the second floors, in addition to the docks. The Baltic store was a United States bonded warehouse. In 1884, at the time of these transactions, it was specially bonded for this business by our firm before we had surrendered possession of it to the Paper Stock Disinfecting Company.

160 Q. Will you describe to the jury what you mean by a bonded warehouse?

A. We have to apply to the collector of the port, in writing, for the privilege of bonding a warehouse. In that application we have to state the size of the store, and where it is situated, and annex to it the certificate of insurance, that it is a first-class warehouse, suitable to the business called for in the application. That application is sent by the collector to Washington, and the Secretary, if he approves it, returns it to the collector. Being approved by the Secretary and collector, we are then called upon to furnish a bond with two sureties, that the goods placed in that warehouse shall at no time be delivered from that warehouse without a proper permit from the custom-house. If goods are delivered from that warehouse without a proper permit from the custom-house, there will be a fine. I have forgotten the amount of the fine. As we have never been found guilty of the offense, I have paid no attention to that. The Government places in charge of a bonded warehouse an inspector or storekeeper; one and the same officer. The official name is storekeeper. We pay the Government his salary on the first of every month. I think that salary is $150 a month. I can easily ascertain about that. His duty is to keep an accurate account of all the merchandise that goes into that bonded warehouse; and when the permits for the delivery of merchandise are presented, they are presented to him, and he then notifies the book-keeper that he has a permit for any of that merchandise, and if an order is sent for it, this order is passed over to this Government storekeeper for his inspection and decision; whether those goods shall be delivered or not. The entire merchandise in that bonded warehouse is under his exclusive control, and when he assents to it, we make the delivery. If he does not assent to it, we cannot make the delivery.

Q. Will you now describe to the jury how goods imported
161 into this country are landed, under what authority?

A. Under the authority of the permits issued by the collector of the port. What the first paper is I do not know, that is issued but where an application is made for the discharge of the cargo of a vessel of goods which are partly free and partly dutiable the order that is then issued is a general order, such as has been introduced in evidence in this case.

Q. Where goods are thus ordered for discharge by general orders, what becomes of the goods, where no permit is presented by the consignee for them?

A. The Government inspector in charge of the discharging of that ship sends that merchandise, under a general order, to the general-order warehouse, called for in the general-order permit. He sends it either by carts or by lighters.

Q. Who is it that gives the receipt at the bonded warehouse, upon the discharge of the goods; I mean, a receipt to the vessel?

A. The United States storekeeper at the bonded warehouse, the one I have already referred to as the storekeeper; and over that we have no control whatever. The goods at this time, then, these formalities having been accomplished, are under the control of the United States authorities. Under a permit for the discharge of the goods from the ship to the warehouse, in form like the one introduced in evidence here, the goods are sent to the bonded warehouse designated on that permit, by the inspector of the ship; and with that the warehouseman has nothing whatever to do.

Q. Will you tell me when you first became acquainted with Dr. Smith, your codefendant?

A. I have forgotten the time. It is some seven or eight years ago. It has been a pretty intimate acquaintance and a very friendly one.

Q. When did you first in any way speak to Dr. Smith upon the subject of rags?

A. I don't remember what year it was; some time in December, 1884, or January, 1885. I was not at that time interested either as director or stockholder in the Paper Stock 162 Disinfecting Co., or otherwise—in the process which was subsequently used by the Paper Stock Disinfecting Co. I don't remember when I became a stockholder, but I think it was in the month of January, 1885. Neither do I remember the date I became a director, but I think that was in February, 1885. Upon any of those dates I am not at all positive. At that time I think the amount of my stock was about forty thousand dollars. The capital stock of the company was five hundred thousand dollars. I hold no office in the company, except that of director. Our firm entered into an agreement on the 8th of February, 1885, with the Paper Stock Disinfecting Company.

Defendants' counsel offers in evidence an agreement made between the Paper Stock Disinfecting Company and E. B. Bartlett & Co., dated February 18, 1885.

Marked "Defendants' Exhibit 30, April 22, 1887," and read.

Witness continuing: That agreement was in force between us and the company, during May, June, July, 1885; it ceased to be in operation on the 1st day of August, 1885. I know that these rags on the Vigilant and Battaglia were treated under the process by the disinfecting company, before the 1st of August, 1885, so that at the time these rags were treated under this process, whatever it was, it was under this agreement. Aside from that we had no other agreement with the company, for disinfecting, during the term between the 29th of May and the 1st day of August. I do not know of any place in the port of New York, which was designated by the collector, for the disinfection of rags, except the Baltic stores. Some statements have been made here by Mr. McClintock, in 163 regard to the interview which I had in Brooklyn with Health Commissioner Raymond. I will state what part I took in that interview, and how I came to go there; I remember some of those that were present. There was Mr. S. Weber Parker, the president of the Paper Stock Company; Mr. Case, agent of the N. J. Litherage Co.; Mr. Baker, I think, of New York, and the others that they have noted here were present; Mr. McClintock and Mr. Meyer and two or three others whose names I have forgotten. I think Mr. Meyer was there. I do not remember what was said at that interview.

Q. I point your attention especially to the statement made by Mr.

McClintock, that you described the lighters which were conveying the cargo from the Vigilant to the Baltic stores, as your lighters. Is that true?

A. I don't remember the statement he made, but I never did state at that time or any other time, that those were my lighters; they were not my lighters; I did not own any lighters at that time. I never owned a lighter, or any interest in any lighter. When Mr. McClintock says: "Mr. Bartlett said he wanted the lighters unloaded, that they were his lighters," I think the first part is correct, but the last part is false. Mr. McClintock also said, in answer to the question "What lighters?" "That the rags were on, out of the Vigilant." "Q. The rags were on the lighters of Mr. Bartlett?" "A. Yes; he said so." That is false. I was at the interview at the office of the Secretary of the Treasury, in Washington. The day I was there was on the 4th of June. I think Mr. McClintock said between the 3d and 6th. I was there on the morning of the 4th.

Q. He says that when McClintock applied for permission to land the rags, by the Vigilant, you stated that they had no permit to land the rags. Is that true?

A. I stated that they had no permit to land the rags from the health officer of the port. I didn't say that they had no per-
164 mit to land the rags, with reference to any permit from the custom-house, or from the board of health; nor did I say that Mr. McClintock had falsely stated such a fact. It was not stated, at that interview, by anybody in my presence that Bartlett had established a disinfecting place in Brooklyn at any expense, and unless these rags were sent there, Bartlett would lose money. I never had established the Paper Stock Disinfecting Company.

Q. Mr. McClintock was asked: "What did Mr. Bartlett say?" And he replied: "Mr. Bartlett said what I have repeated about our vessel, stating that we had a certificate; * * * that is the language he used; that we never had a certificate; that it had been revoked." What have you to say to that?

A. I never made that statement, sir. I do not know about the date of the incorporation of the Paper Stock Disinfecting Company. I had nothing to do with its incorporation.

Q. Do you know, generally, whether it had been incorporated a year or two before you came into it?

A. I don't know anything about it. I was not one of the original corporators, nor one of the original directors or stockholders. The stock in the Paper Stock Disinfecting Company stood in my name—the amount that I have testified. Aside from the fact that we leased under the agreement of the 18th of April, with the Paper Stock Company, I had nothing to do with the disinfection of rags at the Baltic stores. And the same remark applies to my firm. I received from the collector of the port of New York a letter which is now shown me, dated July 18, 1885.

Offered in evidence. Marked "Defendant's Exhibit 31, April 22, 1887."

(Witness continuing:) Our firm became responsible for certain lighterage charges upon these goods to the N. J. Lighterage Company, the owners or charterers of the lighters. I received a bill from the lighterage company for the lighterage of these goods 165 upon the Vigilant and Battaglia; the amount, I think, is the same as in these bills which are marked "K. & R." Looking at the bills dated June 18th and June 27th, I say those bills were rendered as against these goods on the Vigilant and the Battaglia, from the Paper Stock Disinfecting Company, as they appear upon their face.

Offered in evidence.

Marked "Defendants' Exhibits 32 and 33, April 22, 1887," and read.

(The witness continuing:) These bills were given me some time during last summer. I do not know whether the work referred to in those bills was performed before the date of the respective bills. The customary rate for storage upon goods of this kind is that stated in Exhibits K and R; that is the ordinary charge for those goods, under the general order. There is a printed tariff issued by the custom-house, which is our guide regulating those charges. There was some difference between me and Mr. McClintock, or his firm, previous to July 18, the date of this letter from the collector, as to the charge upon these goods and our right to hold them. Some conversation ensued between Mr. McClintock and myself. I don't remember the exact conversation, but my impression is that he asked us to deliver the goods, and I declined to do it. He did not tender me any charges, nor any portion of the charges. He never tendered me any portion of the charges until up to the time of the bringing of the replevin suit that has been spoken of. He made no offer of any kind that I remember until the time of the payment or settlement of these bills, Exhibits R and K.

Defendants' counsel reads to the jury the letter, Exhibit 31.

Q. In this letter the collector speaks of bonded lighters. Explain what bonded lighters mean?

166 A. They are lighters that are bonded at the custom-house, to convey merchandise upon which the duty has not been paid, and upon which there is no permit for releasing that merchandise from the custom-house; in other words, they are bonded the same as a warehouse, with this difference, that they have no storekeeper or inspector stationed on them; between twenty thousand and twenty-five thousand bales of rags were disinfected in the port of New York at the Baltic storehouse in 1885; and all the other rags which came into the port were delivered without disinfection by us; I know of no one else who did it; I never heard of any rags except those disinfected at our place in 1885 in the port of New York.

Q. The statement has been made by my friend Mr. Cochran, which does not appear in evidence, that either you or the Paper Stock Disinfecting Company paid Dr. Sternberg for his examination and attendance at the experiment of disinfecting by this patent process, how is the fact?

A. We did not pay him.

Q. So far as you know, did Dr. Smith pay him?

A. So far as I know they did not pay him. You are referring, sir, to an experiment in January, I think?

Q. Did you ever receive any dividend from the Paper Stock Disinfecting Company?

Objected to as immaterial and irrelevant; objection sustained; defendants' counsel excepts.

(Witness continuing:) The process owned by the Paper Stock Disinfecting Company is a patent process. I am somewhat familiar with it.

Q. When the matter of investing in this company was first suggested to you, did you call for an examination of the process; if so, what was the examination that you called for?

A. I did. I called for an examination by competent experts, and by those men of repute, as I wanted to find out whether it
167 was wise for me to go into this corporation as a director; such a test was made, I think, in January, 1885, at the Kelsey stores, Brooklyn. I attended that examination personally; there were present Dr. Smith, Dr. Sternberg, Dr. Raymond, Dr. Stewart, of Baltimore; a member from the health board of Boston, whose name I have forgotten; Dr. Lindsay, of New Haven; Collector Robertson, from the custom-house; Assistant Secretary French, from the Treasury Department, and Mr. Pollock, the inventor of a process for disinfecting rags, known as the "SO_2." There were several reporters for the press there, whose names I don't know.

Q. Describe how this test was made, and in that, you will necessarily describe the process itself.

A. Before I was willing to take any part in this company, I notified the officers that I must have a public test made before men of repute. These gentlemen came to our warehouse. Dr. Sternberg took charge of the test. A fire was built under the boiler and the steam was conveyed from that to a pyrometer and into the machinery. After the steam was at the right register, a bale of rags was brought from the warehouse and Dr. Sternberg and Dr. Raymond took charge of that bale of rags——

Q. I will ask you to pause a moment, and tell me whether the paper that I now show you is the patent.

A. Yes, sir.

Offered in evidence, marked "Defendants' Exhibit 34, April 22, 1887."

Defendants' counsel: I submit now this patent to the jury, and call their attention to the plates shown in it, in order that they may understand the description which Mr. Bartlett will give of the process, and also the method in which it was carried on.

(Witness continuing:)

A. Dr. Sternberg and Dr. Raymond took charge of this bale of rags. Before trucking the bale of rags into this large box
168 which was to receive it, they placed in different parts of the
bales certain germs of bacteria or spores.

Q. I ought to interrupt you, to ask whether the truck is the truck upon which the bale is put, and both into the box.

A. Yes, sir; the truck and the bale is run into the box. It is the ordinary hand truck such as you see around dry-goods stores every day. They placed in this bale certain germs of disease, as I understood it; Dr. Sternberg so stated to me. Then they put these little pieces of cotton wool which are enclosed in a little glass vial, in different parts of the bale. Some were placed in the centre of the bale after making a hole in it; but most of them were placed near the surface. They would take a spike and bore a hole in the surface and place this glass with cotton and something else in that opening in the bale in various places. The bale was then rolled in the box or chest. Inside of this chest there were three or five screws, I have forgotten which; we have had at times one screw, and at other times three screws and five screws. These screws project from the rear of this box. The bale was rolled in and the machinery was started and the screws commenced to revolve and caught hold of the bale and then drew the bale into the centre or the other end of the box; the rear end of the box. Suspended from the top of that box, though a hole, was a pyrometer which registered the heat inside of that box. The valves were opened and the steam was turned on, under the order of Dr. Sternberg, given by him to the engineer in charge. When Dr. Sternberg had all the steam he wanted in that bale, and examined the register or pyrometer, to see how many degrees of heat he had in that chest, then he notified the engineer to stop, and he turned the steam off. In a few moments the lid was opened and the bale was taken out apparently thoroughly boiled, so that the steam was dripping from every part of it, and the truck underneath was wet. Those glass
169 tubes containing that cotton, with that little thing, the name
of which I don't know, were taken out with a pair of nippers by Dr. Sternberg and by Dr. Raymond, and I saw them placed in a box. That is the last I ever saw of them.

Q. Were they alive when you saw them?

A. I don't know anything about it. There was another experiment made at the same time, and that is with the process of "SO_2."

Q. It is necessary for me to ask you whether the perforations in those screws—the apertures in those screws, when the bale is screwed in, as you say it was—had any means of *excess* to the box itself, around the bale, except by passing through the bale itself?

A. Except by passing through the rags and the bale. A pyrometer is an instrument used to register heat where thermometers fail in registering it as high as a pyrometer will—heat of a very great degree. The pyrometer was suspended through the lid; and the top of the bottom part was hanging loosely between the bale of rags and the chest itself. It had no connection with anything except it hung suspended in that way, inside of the chest. It registered over 330 degrees before we opened the box. There was no method that I know of by which the heat could strike the pyrometer to effect it, except it has passed through the bale of rags.

Q. After that did you invest in this company?

A. After that I became a director in the company; no, sir, after hearing the report from Dr. Sternberg and the results accomplished by that experiment, I concluded to become a director in this company.

Q. Something has been said about payments by you to Dr. Sternberg. Did you ever pay him anything?

A. I don't know. I know that Dr. Smith told me that he paid his expenses—$30. I had nothing to do with the Boston Disinfecting Company or with any company of a similar character in Philadelphia. A circular order or an order of the Treasury
170 Department, dated June 10th, 1885, has been presented here. That is the order which revoked the order of December 22d, 1884, to a certain extent. I do not know when that was received and promulgated in the city of New York. I don't remember when I first saw it. I saw it in the newspapers. The first I knew of it was what I saw in the papers. I am quite sure it was after the 20th of June.

Q. Mr. Prentice desires me to ask you whether, previous to your acquaintance with Dr. Smith, you had been pretty well acquainted with his family?

A. Oh, yes, sir; for many years.

Q. Now, I ask you the general question which the necessities of this case compel me to address you; have you in any way, made any proposition to Dr. Smith, or had any conversation with him, at any time, in which you have endeavored to influence corruptly his official action as health officer of the port of New York?

A. I have not; I have never offered any pecuniary consideration to Dr. Smith, to affect his action as health officer of the port of New York. I have never made any proposition to Dr. Smith, tending to influence his action as health commissioner of the port of New York. I have never made any suggestion in that direction. I have made a proposition to him upon the subject of his action as health officer of the port of New York, in regard to rags. I have spoken to Dr. Smith at various times about the disinfection of rags, and I asked him if he thought it was necessary; whether he thought the process of disinfecting in Europe was honestly, faithfully and truly done, and whether he should continue to allow rags disinfected—or so-called disinfected—rags, from Europe to pass through his quarantine, and he told me in every case, as long as they produced certificates from the government inspectors stationed in Europe, and other places that they had been disinfected, he would allow them to pass quarantine. And he further stated that the only
171 rags he would detain for disinfection were those that never had been disinfected. I had several conversations; not

many, but several. I never asked him to send a vessel with rags, or rags lightered from a vessel, to the Baltic stores. Neither I nor my firm had anything to do with Robbins' reef or any control over Robbins' reef prior to August 1, 1885.

Q. It is stated that the Vigilant's rags were treated to this process upon the barge Erie, at Robbins' reef; did you have any control of the barge Erie or her machinery, at Robbins' reef?

A. No, sir; I never had seen the boat at that time.

Q. Now, sir, I will ask you in the most general manner, whether you ever paid any money to Dr. Smith?

A. No, sir.

Q. Did you ever offer him any money either in this connection or otherwise?

A. No, sir.

Q. Did you ever, directly or indirectly, yourself, or through any other person, offer any pecuniary consideration to Dr. Smith?

A. I never did.

Q. Have either you or your firm made any suggestion, as far as you know, to Dr. Smith?

A. No, sir; neither myself, my firm, nor any living persons, as far as I know, ever did or ever could do it.

Q. Or any officer of the disinfecting company, so far as you know?

A. I know nothing about them. I know nothing about the officers of the disinfecting company.

Q. I said, so far as you know?

A. No, sir.

Defendants' counsel: I omitted to put in one letter, or order. I offer in evidence an order on the custom-house, dated January 14, 1885, marked Defendants' Exhibit 35.

Cross-examination by plaintiffs' counsel:

I have testified that I had $40,000 worth of the stock of the disinfecting company in January, 1885, and I have said that I did not know when the disinfecting company was organized. I made 172 no inquiries as to how this corporation was chartered before I invested in it, nor did I take any steps to inquire whether it was a legal corporation. I never saw any of the reports or the certificates filed by the company with the county clerks of New York or Kings county. The first thing I heard about the disinfecting company, the first time I learned that such an institution was in existence was, I think, in the month of November or December, 1884. S. Weber Parker brought it to my attention; S. Weber Parker was the president of the company. My recollection of it is that it was in the month of November or December, 1884; I think it was in November.

Q. Look at the paper now shown you, and marked "certificate of incorporation," and state whether you recognize that as the certificate of incorporation of the disinfecting company?

A. I do not know that it is, as I am not familiar with those documents. It seems to be. I do not know the first signature at the end of it; I should say it was the same; I should say it was Mr. Parker's signature. I have known Mr. Parker for at least ten years, if not for fifteen; it was an acquaintance simply as a merchant. I have had very large business relations with him. I have seen his signature; I should think that was his signature.

Q. Now, will you turn to the back of that paper and look at the endorsement of the day on which it was made, and you see it was on the 6th of November, 1884. Fold the paper up and look at the back of it. It must have been then filed?

A. Yes; it was in November or December, according to my own recollection, and according to the best recollection I have, that Mr. Parker first approached me upon the subject of the disinfecting company. I did not buy the $40,000 worth of stock; it was given to me by Mr. Parker. My understanding was that this $40,000 of stock of the disinfecting company was a present from Mr. Parker. I visited Washington about December, 1884. This visit was
173 not connected with this disinfecting company's business. I think I did not see the Secretary of the Treasury or address a letter to him, or make any representations to him about the month of December, 1884, touching the disinfecting of diseased rags by this patent process.

Q. Can you give us any reason at all why Mr. Parker presented you with $40,000 worth of this stock?

A. I can give you a great many reasons.

Q. Start with one.

A. Mr. Parker was largely engaged in the storing of East India merchandise in Brooklyn; that is, of jute and jute butts. Mr. Parker and Mr. E. Story Smith, now of the firm of Train, Smith & Co., were agents in this country for a Scotch house of Butterworth & Smally. They were storing in Brooklyn a large quantity of jute and jute butts—jute butts especially. They were storing them all over the Brooklyn shore at different times. I sought to get all of that storage business by solicitation from Mr. Parker and Mr. Smith. At one time they had three cargoes, three ships, on the way from East India, and it was very necessary for them when those ships arrived here to borrow some money on those cargoes. This was at least ten years ago. I raised the amount that they needed and that it was necessary that they should have. It was necessary that they should have a sum of money upon that merchandise when those ships arrived. They had a contract to give those ships to a competing warehouseman. Mr. Parker and his associate found they could not obtain the loan they required upon the merchandise. They told me so. They asked me, or rather Mr. Parker came to my office and asked me, if I received those three ships with that merchandise on storage, could I arrange a loan for him for the amount that he required, after the merchandise was in the warehouse. I said that I could and that I would; and when those ships arrived I arranged it and gave him that loan. After that for many years all the storage business they had in Calcutta merchan-
174 dise, in paper stock and rags, as far as they could, they sent

to our warehouse. That mercantile acquaintance continued right along for a series of years, and up to the time that Mr. Parker called at my office—at the time that he came to give me this stock. When Mr. Parker called at my office, after talking about the merchandise that he had stored, he asked me if I knew anything about the Government orders upon rags. This I think was in November or December; I am sure it was November or December, and I think the latter part of November. I can fix the date very clearly, for at that time I had made an arrangement to spend a vacation, with my family, in Washington, and at that time and before that interview I had already engaged my rooms. Mr. Parker asked me if I knew anything about the Government orders on rags; that rags were prohibited from being landed in this country. I told him that I knew nothing about it. He told me that he had formed a disinfecting company. He described the patent and the work that they intended to do. He said that he would like me to join him in that company in order that the work of disinfecting might be done at my warehouse under their charge, and also that our firm might have the storage upon the merchandise. He then detailed what the company was, stated its capital, and told me somewhat of its patents. I told him that I should be very glad to join him in that simply as a stockholder. He told me that they owned all the stock and that they would give me that stock if I would join them in the enterprise. He then gave me that stock.

Q. Then you did know something about the organization?

A. I knew the company was in existence. I knew what it was incorporated for, but not the method. Mr. Parker did not explain to me that he had all the stock or controlled it. I think I said that he said that the company had all the stock. I asked who the company was.

Q. Did he tell you who they were?

A. No, sir.

175 Q. You asked him, you say?

A. I asked him who composed the company.

Q. And didn't he tell you?

A. Yes.

Q. Then you knew at that time?

A. Yes.

Q. From whom did you get your 40,000 shares? Was it from the company or from Parker individually?

A. I do not know.

Q. I understood you to say that during the months of November, December and January you had no intercourse with the Treasury Department prior to the time that you got this stock?

A. No, sir.

Q. But you got this stock in January?

A. No.

Q. When did you get it?

A. He gave me the stock in November or December, at the time he called at my office.

Q. I understood you to say that you got the stock in January.

A. If I did say so, I was mistaken.

Q. You think that you got the stock in November or December?

A. In November or December.

Q. Which, according to the certificate of incorporation was a very short time after the company was formed. What interest did you have in January, other than what you had in December?

A. None.

Q. During the month of December did you make any representations to the Treasury Department. Did you take any steps, whatever in the way of solicitation or urging or representing to the Secretary of the Treasury as to what should be done with old rags brought into this port?

A. None that I remember.

Q. You are quite sure that your $40,000 worth of stock had no connection with any such act such as representations to the Secretary of the Treasury?

A. I do not remember any such representations.

Q. I ask you if you are sure that your $40,000 worth of stock was given for some other reason than any activity on your part with the Secretary of the Treasury.

A. I do not know.

176 Q. How positive are you that you did not have any dealings or representations or communications with the Secretary of the Treasury on that subject?

A. I did not have.

Q. Let me read you a letter from the Secretary of the Treasury which is in evidence, and let me see:

"OFFICE OF THE SECRETARY, *January* 12, 1885.

"Collector of customs, New York.

"SIR: Under date of 15th ultimo (which is the 15th of December) Mr. E. B. Bartlett addressed a letter to this department touching the selection of warehouse for the storage of imported old rags for the purpose of having them disinfected in the manner proposed by circular of 22d ultimo."

Was the Secretary of the Treasury correct in referring to you as having addressed such a letter to him?

A. Yes.

Q. How do you reconcile that with your prior answer, that you had had none?

A. Very easily.

Q. Please do it.

A. I understood you to ask—did I make any representation to the Secretary of the Treasury * * * I considered that you meant in person.

Q. That is your answer?

A. That is my answer.

Q. You assumed it was in person?

A. Yes.

Q. You desire now to explain your answer by saying that you did not have any communication in person?

A. None that I remember of.

Q. I asked you about "communications." You realize that a communication by letter is, as far as the letter goes, just as much a communication as if you had it in person?

A. Yes.

Q. But it did not occur to you until I read you this letter to state that you had communication with the Secretary of the Treasury on this subject in the month of December by letter?

A. Yes.

177 Q. That did not occur to you at the time?

A. No.

Q. Did you see Dr. Smith during the months of November, December or January about this disinfecting process?

A. Yes.

Q. You did write a letter to the Secretary of the Treasury concerning the selection of a warehouse in which this disinfecting should be done?

A. Yes.

Q. And at that time you did have $40,000 of the stock of the company?

A. Yes.

Q. In order to trace that history down, I will ask when you became a director in the company?

A. I think it was in January, but I am not positive of the date.

Q. Where was this disinfecting company. Where was it located, and where was it doing its business of disinfection prior to your becoming a director?

A. Do you mean to ask where the works were?

Q. Where was the disinfecting done, if they were disinfecting?

A. They were not disinfecting at that time.

Q. Where were their works?

A. They had no works stationed at that time.

Q. Where was the disinfecting company to be found when it was at home?

A. The office was in Temple court in Beekman street.

Q. In a room not quite so large as this room?

A. No, sir.

Q. There were no engines, dynamos or machinery there in that room?

A. No, sir; it was simply a company having an office in a room in the building known as Temple court. I became a director of this company in the month of January; I think it was in January, but I am not positive. I do not know what time in January.

Q. Did you have any correspondence with the Treasury Department after that of the 15th of December, mentioned in this letter here?

A. I do not remember.

Q. Do you mean to say that with that interest in that
178 company you cannot remember whether you made any rep-

resentations to the Treasury Department which would have any effect upon the value of your stock?

A. I do not remember of any.

Q. You remember that you got this $40,000 worth of stock from Mr. Parker to some extent as you explain, owing to some favors which you did him ten years before, and to some extent in pursuance of a conversation he had with you, in which he desired your assistance in launching the company, so to speak; is that a correct statement of how you got that $40,000 worth of stock?

A. I should say so.

Q. At the time you got it, or after the month of January, the company was launched only so far as to be on paper; you became a director in January; then what followed? The company got a place of abode, so to speak, for its works, did it not?

A. Yes; it was in the Baltic stores; I think I was a director before they got that place of abode; I do not remember the date when they moved to our stores; I think they had a temporary place of operation in New York, before they started in our stores, but I do not know where; I am under the impression that they made some preliminary tests in New York, October or November, but upon that I am not sure; the month of October was before the company was organized, and before this process was owned by it; after the incorporation of the company I think it did not have any operation at all until our store was selected as the sphere of its activity.

Q. You became a director in the month of January, according to your recollection; was the quantity of your stock increased any then?

A. Yes; I received later on—I have forgotten the month—$10,000 more.

Q. Was that at the time you became a director, in the month of January?

A. No, sir.

Q. Was it before or after you became a director?

A. It was after that.

179 Q. How long after?

A. I think it was at the time that our contract was made with the company.

Q. The contract bears date of February?

A. Yes, I think it was that date.

Q. How did you come to assume the labors and duties of the place of director; what circumstances led you to assume that responsibility?

A. I was invited by the company to become a director; Mr. Parker was the member of the company who invited me.

Q. Did he give you any reasons for becoming a director?

A. No, he simply asked me if I would be a director, and I became one.

Q. Did he give you the $10,000 worth of stock to be a director?

A. No.

Q. What did he give you that stock for?

A. For the same reason, I suppose, that he gave me the $40,000.

Q. Did he feel that the obligations of ten years were not discharged by the $40,000?

A. I do not know.

Q. Or did he feel that in order to be fully compensated for your former services he should give you ten thousand more?

A. I do not know how he felt.

Q. When these shares of stock to the amount of thousands were rained upon you, did it never occur to you to ask Mr. Parker why he was giving you all these shares of stock?

A. I did not ask him.

Q. You accepted them as providential gifts that were thrown in your way, and they were taken without any question. Is that it?

A. They were taken without any question. I do not know as to the providential gifts.

Q. Whether you attributed them to Providence or to Parker you decline to say?

A. I have said that Mr. Parker gave me the stock, and not Providence.

180 Q. And you do not think that Mr. Parker was working under Providence?

A. That is for the counsel to say.

Q. On the 13th of February, 1885, the Paper Stock Disinfecting Company, a corporation duly incorporated under the laws of the State of New York, and your firm, made an agreement which has been put in evidence here, and marked "Defendants' Exhibit 30." Before that agreement was made, had you made any application to the Secretary of the Treasury or any representations to him of any kind? And this time in the question I desire to include letters as well as personal visits.

A. I do not remember.

Q. These $50,000 worth of shares, representing 50,000 shares of stock, were of substantially no value unless the company should become active and go into active operation. Is not that so?

A. Yes.

Q. You knew that at that time?

A. Yes.

Q. Did you not have some interest in giving a value to this stock which amounted to $50,000?

A. Yes.

Q. Do you not recollect what steps you took, acting under that interest, the extent of which you testify to now?

A. I made a contract with them for doing their business through our warehouse.

Q. You knew that they would not do any business unless it was under the control, or at least with the assistance, of the Government, did you not?

A. Yes.

Q. And therefore the assistance of the Government was necessary in order to make this contract valuable to you as well as your 50,000 shares of stock?

A. Yes.

Q. Can you say to the jury that you cannot tell them what steps you took in order to carry out this very interest which you had?

A. I do not remember any steps. I may have taken some steps, but I do not recollect any.

Q. Did you ever visit Washington?

A. I have.

181 Q. Did you see the Secretary of the Treasury?

A. Not that I remember.

Q. Did you see any officers of the Treasury Department?

A. I think I have seen Mr. French.

Q. Where did you visit Mr. French?

A. I did not visit him.

Q. Where did you see him?

A. I saw him at various times. I have seen him in his office.

Q. Did you converse with him about this process?

A. Not that I remember.

Q. Did you see Mr. Coon?

A. I did.

Q. Did you converse with him about this process?

A. I think not.

Q. Did you make any representations, by letter or by word, to anybody as to the value of this process in disinfecting rags?

A. Not that I remember.

Q. Does that answer apply to all the time the disinfecting company was disinfecting?

A. No, sir.

Q. Did you at any time make representations to the Treasury Department touching or concerning the operations of this company?

A. I do not remember.

Q. Your memory this morning was pretty good; and it is generally pretty good, is it not?

A. Yes.

Q. And on matters that relate to your interest you are generally able to remember important events covering, I suppose, one or two years?

A. Yes.

Q. Do you not consider the action that the Government took in relation to this disinfecting process, and the steps that brought about that action, a matter of some importance to you, owning 50,000 shares of the company, and holding this contract with them?

A. Yes.

Q. Do you desire still to say to the jury that you cannot recollect whether you made any representations or acted upon the subject—any representations to the Government upon the subject—or to any of its officers, either by letter or word of mouth, or by
182 messenger to them?

A. I do not remember any.

Q. You will not say that you did not, or that you may have done so?

A. Neither.

Q. Upon that subject your memory is a failure, we may say?

A. As you propose.

Q. You do remember this agreement, do you not?

A. Yes.

Q. This agreement was made on the 18th of February, 1885, and by it the disinfecting company agreed to pay you a dollar and a half for each ton of rags that will be disinfected by this patented process which the company control. Under it the parties of the second part (which, I take it, refers to your firm), agree to keep just and proper accounts of all rags disinfected in said port of New York during said period, which accounts are to be rendered daily to the party of the first part, and adjusted on the first day of each month, and any amount due thereon paid to the party of the second part on or before the 15th day of said month; and said books and accounts shall be open at all times to the inspection of the officers of the party of the first part during business hours. Is it the meaning of that section, or rather was that section intended to convey to the parties of the first part the idea that the disinfecting was to be done by your firm?

A. No.

Q. How then were you to keep proper accounts of all rags disinfected in the said port?

A. By having reports made to our book-keeper by their foreman.

Q. Did not the disinfecting company itself disinfect the rags?

A. Yes.

Q. And was it not in a better position to keep the accounts than you could have been?

A. No.

Q. Do you mean to say that the company which actually handled the rags and disinfected them, and put them through the different processes, could not keep the accounts of the quantity of rags which they disinfected, as well as you who merely had the
183 storage of them?

A. They could have kept the number of bales disinfected, and the company reported that to our book-keeper in our office at the Baltic stores. That is the way in which we kept the account of them—simply from the reports to our book-keeper.

Q. But, according to this agreement, your firm agrees to keep the account, and to report it to the disinfecting company?

A. That is the book accounts.

Q. "The said parties of the second part agree to give just and proper accounts of all rags disinfected in said port of New York during said period." Do you mean to be understood as saying that you did not keep accounts of the actual number of bales of rags disinfected?

A. It means they were to keep book accounts of what was reported to them.

Q. Your understanding is that the disinfecting company first kept the accounts and reported them to you, and then you kept the accounts?

A. The disinfecting company's foreman reported to our book-keeper the number of bales he had done each day; and our bookkeeper made the reports and entered them on his books.

Q. And reported it back to the disinfecting company?

A. Yes.

Q. Is it not true that in this second agreement you agreed to furnish all the manual labor necessary for receiving, disinfecting and delivering said rags? In that clause did you agree to furnish all the labor necessary for disinfecting?

A. No, sir.

Q. What do you mean by those words—that you were also to furnish all the manual labor needed for receiving, disinfecting and delivering such rags? What other labor was there?

A. There was a great deal of other labor beside that.

Q. Describe it.

A. We were to furnish all the labor necessary for trucking the rags from the ship up the pier, across the wharves, into the
184 warehouse and alongside of their machine. The bales of
rags were on the trucks, and were run into the machine by our men, under the head of manual labor. After the truck was in the box it was the duty of our men to close the lid up; and that was all.

Q. Was there any other manual labor which you furnished outside of that which you have already described?

A. After the rags were disinfected our men then pulled or lifted the lid, and pulled the truck out of the box, and trucked the rags away from the box. This was in the room required in the warehouse. This the men did in order to facilitate their business. All the manual labor required in handling the merchandise, except the process of disinfecting—that our men did.

Q. Now, you have described what your men did by way of manual labor. I understand you to say that they took the rags, wheeled them up to this machine and wheeled them into it, and closed the lid of the box. That was all done by your men as employees of your firm?

A. Yes, under that contract.

Q. Now describe what manual labor was performed in disinfecting by the employees of the disinfecting company.

A. They had to provide their own engineers to take charge of their engine. I think there were two engineers. They had stationed at each of the boxes a man to take charge of turning on the steam, and regulating the flow of the steam, and to take charge of the pyrometers, and then to watch the pyrometers the length of time the rags were in the box. When they determined that the rags had been thoroughly done then they turned the steam off, and our men opened the lid. In the disinfecting of the rags we had nothing to do.

Q. I do not ask you about the disinfecting of the rags, or whether you had anything to do with it or not. I ask you only about the
manual labor. You have described the two engineers who
185 had charge of the engine. Was there only one fireman there?

A. That was all. That one fireman was supplied by us;

so that we had two engineers and one fireman in charge of those machines.

Q. You furnished the fireman under this contract, and they furnished the engineers. My question is, were there two engineers to one fireman. You say that there was. There was also, you say, a man to each box, to turn on and off the steam. There was also one man to watch the pyrometer. I ask you if the man who turned on and off the steam did not also watch the pyrometer?

A. I do not know.

Q. Do you mean simply to say that there were two men to each box, or one man to each box?

A. I do not know.

Q. Do you know anything about the number of men that the company employed?

A. No, sir; not how many.

Q. You know that you furnished all the labor up to the shutting down of the lid, and that all the labor there was then that was necessary was to turn the steam on and off?

A. Whatever labor there was they did.

Q. The firemen shoveled in the coal?

A. Yes.

Q. And did all the manual labor around the engine?

A. I do not know.

Q. From what you have seen of the working of the engine, did you ever see any one else shoveling in coal or doing anything excepting the fireman you employed?

A. Yes.

Q. Who else shoveled in the coal?

A. I do not know.

Q. Were they your laborers or their laborers?

A. I do not know whom they belonged to. They were not ours.

Q. Now, under this contract, your firm derived $1.50 of an interest in each $5 that was charged by the company. For every ton of goods that they disinfected your firm got $1.50?

A. We got $1.50.

186 Q. And you supplied the labor in this disinfecting outside of what you have described here today?

—. Yes; and something more.

Q. You furnished something more?

A. Yes.

Q. Describe it?

A. We furnished our wharves, piers and warehouses. That was all included in the rent.

Q. The disinfecting company which furnished nothing but the manual labor, the engineer and the man who turned on and off the steam, took $3.50, when they charged $5; and you got $1.50 yourself for furnishing all the rest of the labor, and the wharves and barge, and whatever applies to the habitation for the disinfecting business, or to carry on the disinfecting business. Is that what you testify to?

A. We did not furnish the barges.

Q. You furnished the wharves, the store and the building?

A. Yes.

Q. You had $50,000 worth of interest shortly after, or at the time the contract was signed?

A. I think so.

Q. It was about the same time?

A. It was about the same time.

Q. Did you increase your stock in that company subsequently?

—. I did not.

Q. At no time?

A. No, sir.

Q. What has become of the disinfecting company?

A. They are still at Temple court, I think.

Q. Are they still in the Baltic stores?

A. No, sir.

Q. What has become of the plant and machinery they had at the Baltic stores?

A. We have it locked up in our yard; we have taken it out of the Baltic stores.

Q. And you now have it locked up in your yard?

A. Yes.

Q. When this money was paid over to your firm in the month of October, 1885, by the plaintiffs in this action, where was the disinfecting company then? Was it reduced to its original place
187 of abode at Temple court, or was it still in the building at the Baltic stores?

A. I do not know; they were not operating at the Baltic stores then; we had taken the plant and the machinery.

Q. And you had taken all there was of the disinfecting company in the Baltic stores?

A. In the Baltic stores, yes; at that time the disinfecting company had become indebted to us.

Q. And you had taken this in payment of your debt?

A. Which?

Q. This stock?

A. No, sir.

Q. The machinery?

A. No, sir.

Q. By what right did you take the machinery?

A. We simply held it there for them; it is not our machinery; it is theirs.

Q. You still hold it for them?

A. We simply hold it.

Q. Since the disinfecting of rags has ceased to be a feature of their importation, the disinfecting company does not do business in your store any more?

A. No, sir.

Q. Is it not the fact that all the business that that disinfecting company ever did sprung from these orders that were made from the Treasury Department and from Dr. Smith?

A. I do not know.

Q. Did you have any conversation with Dr. Smith as to the course that he would pursue in relation to rags imported from European cities?

A. I did.

Q. When was the first conversation?

A. I do not remember.

Q. Was it as far back as the month of December, 1884?

A. I think so.

Q. You had a conversation with him as far back as December, 1884?

A. Yes; I do not remember when in December.

Q. Was it before or after you got that $40,000 worth of stock?

A. I do not remember; my impression is—do you want my impression?

188 Q. I will take your impression in default of anything better.

A. I think it was before that; that is, if I received the stock in December it was some time in December that I had my conversation first with Dr. Smith.

Q. I understood you to say that your best recollection was that you got your stock in November?

A. Either November or December.

Q. And that you had your conversation in December?

A. Yes.

Q. Now, putting both of those best recollections together, is it not the fact that your best recollection is that you had your conversation with Dr. Smith after you got the $40,000 worth of stock?

A. It may have been.

Q. Is not that your best recollection?

A. I do not know.

Q. Do you not know what your best recollection is?

A. Yes.

Q. Then, can you not tell us your best recollection on that subject?

A. I have given it.

Q. Is it your best recollection that your conversation with Dr. Smith as to his action, with reference to imported rags and what should be done with them, took place after you got $40,000 of stock?

A. That I do not remember.

Q. Did you know anything about the rags before you got this stock?

A. In respect to what?

Q. In reference to disinfecting.

A. Yes.

Q. Did you have an interest in disinfecting before you got the $40,000 worth of stock in the disinfecting company?

A. No, sir.

Q. How did you come to talk to Dr. Smith about it?

A. In the same way that I talked to Dr. Smith about the quarantine of other merchandise.

Q. The rags were to be entirely free from duty, were they not?

A. Yes.

Q. You did have a conversation with Dr. Smith, but cannot tell whether it was before or after the receipt of the $40,000 worth of stock?

A. I cannot remember.

189 Q. Let me give you a suggestion which may improve your memory. Before you had the 40,000 shares, it is to be presumed that you were an impartial auditor of what Dr. Smith had to say or do, but that after you took it you had an interest in what you would do. With that suggestion before you, will you not tell us whether before you had this conversation with Dr. Smith you were talking with that impartiality that comes from indifference, or with that eagerness which comes from interest?

A. I think I was talking with that impartiality which comes from a just man.

Q. But a just man with or without $40,000 worth of stock—which was it? Was it a just man with $40,000 worth of stock in his pocket, or a just man that did not have any stock in his pocket?

A. I do not understand your question.

Q. Was the conversation between Dr. Smith and yourself a conversation between a just man with $40,000 worth of stock, or a conversation between Dr. Smith and a just man without $40,000 worth of stock?

A. I cannot answer in that way. It would have made no difference to me, and did not make any difference to me, whether I had that stock or did not have that stock, in my talks with Dr. Smith—at that time, or at any other time.

Q. In your conversation with Dr. Smith, who you have already testified had a decisive effect upon you, or whose action had a decisive effect upon the value of this process, you desire now to say that it did not make the slightest difference to you in the impression it made upon your mind, whether you had the stock or whether you had not.

A. It made no impression whatever.

Q. Where did this conversation occur?

A. I do not remember.

Q. Can you not remember whether on the sea or on the land—whether it occurred at quarantine or in your stores; can you not remember something about it?

A. No, sir; I cannot.

Q. Do you know Mr. Thomas C. Platt?

A. I do.

190 Q. How long have you known him?

A. I have known him for a great many years.

Defendants' counsel: I move to strike that out as immaterial.

Motion denied; exception.

Q. Did you ever meet Dr. Smith at the office of Mr. Platt at any time?

A. I have; a great many times.

Q. Did this conversation occur anywhere within the hearing of Mr. Platt?

A. No, sir.

Q. You remember that very well?

A. I think so.

Q. Your memory was faint about that conversation awhile ago. Has it improved now?

A. It is all right.

Q. Can you tell whether you had your $40,000 worth of stock when you had that conversation with Mr. Smith?

A. No, sir.

Q. You did not have it?

A. No.

Q. Your memory is now improved.

A. Yes. You are speaking of the first conversation that I had with Dr. Smith and Mr. Platt.

Q. I am asking about your conversation with Dr. Smith about the importation of rags, and his actions in connection therewith; and I ask you if you had any conversation with Dr. Smith in the office, or in the hearing of Mr. Platt?

A. I have had, at different times.

Q. About this question of the importation of rags, and the action of the quarantine commissioners?

A. Yes.

Q. Mr. Platt is a quarantine commissioner?

A. Yes.

Q. And the quarantine commissioners prescribe the rules and regulations for the importation of merchandise?

A. Yes.

191 Q. The Treasury Department has remitted or did remit the question of the landing of rags by the Vigilant and by the Battaglia to the health officer of the port; you are aware of that?

A. Yes.

Q. We have had testimony from you to the effect, that while you had $50,000 of this stock, you did not know whether you ever took any action whatever, to influence the Treasury Department as to the regulations they might make for the importation of merchandise?

A. I do not recollect.

Q. Does that answer apply to correspondence, as well as to personal representation?

A. I do not remember any correspondence or personal representation.

Q. Does this letter which I have read to you remind you of correspondence on that subject?

A. The letter which you have read reminds me of that letter.

Q. In that letter you made application to the Treasury Department to have the Baltic stores and the disinfecting company mentioned as the places in which the disinfecting should be done, did you not?

A. The Baltic stores; yes, sir.

Q. Did you speak of the disinfecting company in that letter?

A. I do not remember.

Q. Was there any disinfecting process fixed at that time?

A. What is the date of that letter?

Q. This letter is dated January 12, 1885.

A. Do you mean officially fixed by the Government?

Q. Yes.

A. I think not.

Q. Was it not fixed by Dr. Smith at that time?

A. I think not.

Q. Let me read to you from this letter: "The letter was referred to Dr. W. F. Smith, health officer at New York, and Dr. Raymond, health commissioner of Brooklyn, and both of these gentlemen agree as to the propriety of landing and storing rags at the Baltic stores, situated at the foot of Baltic and Harrison streets, Brooklyn, as being most conveniently located, as affording an abundance of room for the purposes of this disinfection and for storage.
192 This proposition applies, of course, only to rags that may
pass up to your port by consent of the health officers." That paragraph is in the very same letter which refers to the communication of Mr. E. B. Bartlett in relation to this very subject. Does that bring back to your mind any conversation which you had with Dr. Smith with reference to the action of the health officer of the port in relation to those rags?

A. No.

Q. Were you active in any way in obtaining any regulations or rules or actions from the health officer, or from any other authority on the question of imported rags?

A. What do you refer to by being "active"?

Q. Did you take any steps to secure the designation of your stores and the disinfecting company's process as the place and means by which this disinfecting could be done?

A. I did by writing that letter which you refer to.

Q. Did you by any other steps?

A. I do not remember that I did.

Q. Did you not, as a matter of fact, write several letters on that subject?

A. I do not remember.

Q. Did you consult with Mr. Platt and Mr. Dutcher together on the subject?

A. I did not.

Q. Did you ever meet the health officer, Mr. Platt and Mr. Dutcher together on this subject?

A. Not that I remember.

Q. Do you know Mr. Dutcher?

A. I do.

Q. Was Mr. Dutcher concerned with the disinfecting company as stockholder or as counsel, or represent the company as agent in any matter?

A. No, sir.

Q. Do you remember an interview before the Secretary of the Treasury when these rags were the subject of discussion.

A. I do.

Q. Was Mr. Dutcher present there?

A. He was.

Q. Were you surprised to see him?

A. Not at all.

Q. Did you know that he was going to be there?

193 A. I spoke to him when I was going, and he went over with me the afternoon before.

Q. Did you know he was going over?

A. He went there with me.

Q. Mr. Dutcher went with you and appeared before the Secretary of the Treasury in opposition to the landing of these very rags, did he not?

A. I do not know that he did.

Q. What were you doing there at Washington?

A. I went to Washington, on the evening of the 3d, with Mr. Dutcher, and appeared before the Secretary on the morning of the 4th to listen to statements by Mr. McClintock, Mr. Meyer, and, I think, the captain of the Vigilante, and also to listen to what the secretary of the Paper Stock Company had to say.

Q. What were you to do there?

A. To listen to those statements.

Q. Simply as a listener?

A. That is all.

Q. You went all the way to Washington, accompanied by Mr. Dutcher, for the purpose of listening to a discussion as interesting as that?

A. Yes.

Q. You had no interest whatever in the nature of the discussion except as listener?

A. That is all, and its results.

Q. How did you know there was going to be a discussion before the Secretary of the Treasury on that day?

A. I heard Mr. Vernon H. Brown, the agent of the ship Vigilante, say that the captain was going on to Washington that night with Mr. McClintock.

Q. And that was the reason you went down there?

A. Yes, to hear what they had to say.

Q. How did Vernon H. Brown come to tell you that?

A. We are doing business constantly with Vernon H. Brown & Company. I had large business connections with them.

Q. When did Mr. Brown tell you that?

194 A. I do not remember the date. I do not know that he told me. He either told me or told my young man on 'change. I got to hear of it.

Q. Tell us exactly what you heard, no matter where it came from.

A. I heard that the captain of the ship and Mr. McClintock were going to Washington, or were in Washington, in reference to rags by the Vigilante.

Q. Where were you by that time?

A. I was in my office if I heard it from my young man. If I heard it from Mr. Brown I was probably on 'change.

Q. Did you go that same evening?

A. Yes.

Q. Where did you find Mr. Dutcher?

A. He went with me.

Q. As a listener?

A. Yes.

Q. Did you read in the report of the testimony of the Secretary, Mr. Fairchild, or did you hear read, the fact that Mr. Dutcher had various conversations with him about the health of the port, and the effect of imported rags upon the general health?

A. I heard what was read.

Q. Did you have any conversation with that same gentleman on that subject, the health of the port?

A. No, sir.

Q. Did you with Mr. Dutcher?

A. Yes; I did with Dutcher.

Q. Did you ask Mr. Dutcher to go with you to Washington?

A. Yes.

Q. How did you come to do that?

A. He was in my employ, and had been for a long time.

Q. In what capacity?

A. In looking after my interests in Albany, in New York and in Washington.

Q. In Albany, in New York and in Washington?

A. Yes.

Q. Albany is the seat of legislation for the State of New York?

A. Yes.

Q. Was Mr. Dutcher in your employ to look after your interests in the matter of legislation, or in the neighborhood of the legislature?

A. Yes, sir.

195 Q. And in Washington, was he your agent to look after your interests before Congress and the departments?

A. Before the departments—yes.

Q. And did he go down with you on that occasion because he was in your employ?

A. Yes; because he was in my employ.

Q. Did you take a man who was in your employ in that capacity on that journey, when you were going yourself only as a listener?

A. That was all.

Q. Did you want him to be a listener also?

A. Yes; sometimes it requires to have three listeners.

Q. That is very true; but in this case I presume you would rather have had one than three?

A. A. No, sir.

Q. Why did you want to be a listener there?

A. I wanted to hear what statements were made by the Secretary as to these particular rags.

Q. What interest did you have in that?

A. The disinfecting works were stationed at our warehouse.

Q. Then you went there because of your interest in the disinfecting company; is that it?

A. No, sir.

Q. Then I will repeat my former question. What interest did you have in what transpired before the Secretary of the Treasury, that induced you to go down there, with a gentleman who had been in your employ for several years to look after your interests in Albany, New York and Washington?

A. The interest I had in the disinfection of rags, under my contract which you have there, and the storage of the rags.

Q. Then it was your interest in the rags to be disinfected by this company and your interest in that contract that took you there?

A. Yes.

Q. So that you were there on account of that interest?

A. Yes.

Q. You heard the discussion that occurred before the Secretary of the Treasury?

A. Yes.

196 Q. You heard Mr. W. Scott Smith represent that those goods had not been on board the ship before the 1st of January?

A. Yes.

Q. You heard the captain's statement, that although they had not been actually on the decks of the ship, that they had been on lighters and delivered to him before the 1st of January?

A. I heard this statement, but I do not remember what it was.

Q. Did you not hear the statement of the captain that the ship could not enter the harbor, but was able to anchor some distance from it, and that it was necessary on account of that to lighter the goods out to the ship?

A. He may have made the statement, but I do not remember the words that he used.

Q. Do you remember a statement substantially of that import being made before the Secretary of the Treasury?

A. Substantially that, yes.

Q. You had an interest in the general health of the port?

A. Yes.

Q. And you were there partly as a philanthropist, with Mr. Dutcher?

A. Yes.

Q. And partly as a person interested in the disinfecting company?

A. Yes.

Q. Your combined motives of patriotism and interest caused you to listen to this discussion, and you heard that statement made, and that statement was substantially undisputed, was it not?

A. I think so.

Q. Do you not know, as a matter of fact, that under the regulations of the Secretary of the Treasury, goods which had been shipped before the 1st of January, 1885, were exempted from the regulations which required their disinfecting on arrival at this port?

A. I remember it, in the circular.

Q. Now, as a patriot, if not as a disinfector, did you not consider that those goods so described as being alongside of that ship before the 1st of January, were substantially shipped before that time?

A. I did not.

197 Q. At the conclusion of this hearing before the Secretary of the Treasury, at which you were present as a listener, you and Mr. Dutcher came back to New York?

A. Yes.

Q. Who did you see next about the Vigilante's rags?

A. I did not see anybody about them.

Q. After going all the way to Washington, did you not go down to see the health officer about them?

A. I did not.

Q. You knew that the matter had been referred to the health officer?

A. I did not.

Q. Did not the Secretary of the Treasury say that he had referred it to the health officer?

A. I do not remember that he did.

Q. How did the Secretary of the Treasury wind up that meeting?

A. My impression is that he stated that he would refer it to the collector. I do not think he said he would refer it to the health officer.

Q. Did Mr. Dutcher see the health officer, that you know?

A. I do not know that he did.

Q. He was in your employ?

A. Yes.

Q. Did he tell you whether he saw him or not?

A. I do not know.

Q. Did you tell him to see the health officer?

A. I do not know.

Q. Did you go with him to see the health officer?

A. I do not know.

Q. You would be likely to know?

A. I do not know.

Q. Do you think that his employment was such that he would know what was right to be done, and would go and do it without direction?

A. I do not know that.

Q. Do you think that he would be likely to do so?

A. He may have seen the health officer about it, but I do not know whether he did or not.

Q. He was under your general employment, and knew that you wanted to get as many rags in that place as you could?

A. No.

198 Q. He was in that place to look after your interests?

A. Yes.

Q. And your interest was to get as many rags in there as you could?

A. Yes; but Mr. Dutcher looked after other interests besides that.

Q. What other interests?

A. Do you want to know?

Q. To some extent. You had enough interest in that to take Mr. Dutcher to Washington with you?

A. Yes.

Q. Did you not have enough interest in it to send him down to Staten island?

A. No.

Q. Did you not have enough interest, after taking him to Washington, to send him down to quara-tine?

A. No, sir.

Q. Did you see the health officer before you went to Washington?

A. No, sir; only a moment.

Q. When, before your journey to Washington, had you seen Mr. Smith, the health officer?

A. I do not remember. I never saw him with reference to the Vigilante's rags.

Q. Do you remember whether you saw him within a week, or a month, or a year?

A. No, sir. Quite likely I saw him during all the years of our acquaintance, seven or eight. It was a very common thing for the doctor to drop into the office two or three times a week. It is quite likely that I may have seen him two or three days before this, or I may not.

Q. You saw him pretty continuously for the last six or seven years?

A. Yes.

Q. During the last six or seven years he has been health officer?

A. Yes.

Q. Did you know him before he was health officer?

A. I did not. My acquaintance began either just before that time, or just after that.

Q. Just about the time that he became health officer?

A. Yes.

Q. Have you an extensive acquaintance in Alleghany county?

A. No, sir.

199 Q. The doctor is from Alleghany county?

A. Yes.

Q. Did you have an acquaintance with the doctor while he was a resident of Alleghany?

A. I think not.

Q. Your acquaintance with him began after he came to the seaboard?

A. Either before or after.

Q. You have said, I believe, that the value of this stock of the disinfecting company which you held depended entirely upon the regulations to be made by the quarantine officers?

A. No, sir.

Q. Did you not say that in order to have any value at all, it depended upon the fact that the quarantine officers might send rags that were to be imported in this port to be disinfected by this disinfecting company?

A. I think I said that about the Government orders.

Q. No matter who the orders were from, the value of these rags, the value of this process, and of your stock depended upon the regulations that would result in sending rags imported into this city, to your stores, and to the disinfecting company's machine for disinfection?

A. Or any other machines that might be established.

Q. Did you have many conversations with Dr. Smith upon that subject? I do not ask you to fix the dates.

A. On the general subject of disinfecting?

Q. Yes.

A. Yes.

Q. And upon the general subject of the value of this process?

A. No, sir.

Q. You invited him to see a test?

A. We did.

Q. Who invited Dr. Sternberg?

A. Dr. Smith.

Q. Dr. Smith invited Dr. Sternberg to view this test in your Baltic stores?

A. It was at my other warehouse, the Kelsey stores. We had an experimental machine or works constructed at the Kelsey stores, for the purpose of this experiment alone, and for no other purpose; and not for the purpose of disinfecting rags there.

200 Q. You were asked by your counsel if you had any interest in the barge or in the disinfecting process at Robbin's reef. You were a stockholder in that disinfecting company?

A. Yes.

Q. Did they not have a barge down there?

A. Yes.

Q. Were not the Battaglia's rags disinfected there?

A. Yes; but I thought the question was as to the barge.

Q. With the explanation from me that the subject-matter enquired about now is not the barge but the machine and the process of disinfecting, do you now say that you had no interest in the disinfecting of those rags of the Battaglia?

A. I was interested as a stockholder and as a director.

Q. After you came back from Washington did you take any steps to see what the decision of the Secretary of the Treasury had been, or would be concerning this matter which you thought sufficiently important to induce you to take a journey to Washington to be present at?

A. I do not remember of any steps.

Q. You remember that you had enough interest in this matter to go all the way to Washington with Dutcher, who was in your employ?

A. Yes.

Q. Do you mean to say that you cannot tell us whether your interest was sufficiently active when you came back and sufficiently alive as to impress upon your memory the fact whether you took any further steps as to those rags in the Baltic stores?

A. I did not take any steps at that time or at any other time to get those rags in the Baltic stores.

Q. Was not that trip to Washington made for that purpose?

A. My purpose was to listen to the statement that might be made there by Mr. McClintock.

Q. Did you not testify a short time ago that your motive in going to Washington was to listen to what might be said, and that your interest in it sprang from your interest in this contract and process of disinfecting?

A. Yes.

201 Q. Then it was your interest in that that brought you to Washington?

A. Yes.

Q. Did not that same sense of interest continue when you came back?

A. No; not sufficient to induce me to take any active steps in the matter.

Q. The interest which brought you to Washington evaporated during the journey; is that what we are to understand?

A. No; I do not mean to say that.

Q. When did your interest in it cease?

A. It did not cease.

Q. You had enough interest to go to Washington?

A. Yes.

Q. Do you mean to say that you did not have enough interest to take steps when you got back — make sure that those rags would come to the Baltic stores?

A. I did not take any steps when I returned to secure that merchandise at the Baltic stores.

Q. Or to cause any steps to be taken?

A. I did not.

Q. Did you see anybody or say a word to anybody about it?

A. I did not see anybody.

Q. Are you sure about that?

A. I am positive about it.

Q. Let us see about that; how as to the collector?

A. Do you mean did I see anybody with reference to the Vigilante's rags?

Q. I mean to ask if you did anything either by word of mouth, or by act or by letter, to secure the delivery of those rags at the Baltic stores for the purpose of disinfection?

A. I do not remember any steps.

Q. Did you not appear before Dr. Raymond?

A. Yes.

Q. Was not that a step in that direction?

A. Yes; that might be looked upon as such.

Q. Could it be looked upon as anything else?

A. No, sir.

202 Q. Now, with your recollection of that fact, I ask you if, as matter of fact, you did not continue to take steps to secure the delivery of those rags in the Baltic stores for the purpose of being disinfected by this process?

A. Not as I understand your question.

Q. Have you not said, a moment ago, that it was your interest in that and your desire to bring about that result which brought you before Dr. Raymond?

A. Yes.

Q. Was not that a step in that direction?

A. Yes.

Q. Was that one of the motives you had in going before Dr. Raymond—to secure the delivery of those rags into your store, and to subject them to this process?

A. That is all.

Q. You got the rags into the store?

A. I did not get them in. The rags were delivered at the store.

Q. The rags were delivered there?

A. They were.

Q. And the disinfecting company received this money from Lockwood & McClintock?

A. Yes.

Q. And your charge for storage?

A. Yes.

Q. And for lighterage?

A. Yes.

Q. It was paid to you?

A. Yes.

Q. And that contract continued in existence?

A. Yes.

Q. And, under this contract, you got at least one-fifth of what was charged for disinfecting?

A. No; I think not.

Q. It was more than that; it was one-third; it was $1.50 of the $5?

A. I received $1.50 per ton.

Q. And the charge was $5 per ton?

A. With something else—with an allowance.

Q. You got $1.50 per ton?

A. Yes.

Q. Did that go to the account of your firm?

A. Yes.

Q. And your partners profited by that?

A. Yes; or lost by it.

Q. This was done by you throughout as a member of that firm?

A. Yes.

203 Q. And with the knowledge and approval of your partners?

A. Yes.

Q. They knew all about it?

A. Yes.

Q. They were acquainted with all the steps you have taken in the way of getting the rags delivered in your store?

A. No; I do not think they knew all of the steps which were taken.

Q. But they were generally aware of the fact that you had this disinfecting business, and that you were seeing after its interests and seeing that goods came there as much as possible?

A. They knew that I had charge of it.

Q. And you had charge of it as a member of the firm?

A. Yes.

Q. And this contract was with them as a firm?

A. Yes.

Q. And it was in their interest that you were doing this as much as in your own?

A. Yes.

Q. Did they know that you went to Washington with Mr. Dutcher?

A. Yes.

Q. Did they know the object of your visit?

A. I do not know that they did.

Q. Did you explain it?

A. I did not.

Q. Did you explain it when you came back?

A. No.

Q. Did you ever mention it?

A. I do not think that I ever talked with them about it.

Q. Why did you keep it a secret from them?

A. It was no secret.

Q. Did you not usually explain to your partners the reason of your absence when you were absent for a day or so?

A. No.

Q. Did not they know where you went to?

A. They knew; certainly.

Q. They could have telegraphed to you if they had wanted to?

A. They could.

Q. Did they not know what your business was?

A. They frequently know I am away from the city, but they do not always know why I have gone.

Q. On this occasion did they know?

A. They knew I was away from the city.

204 Q. They subsequently knew, when the case was settled and the money paid, that you had gotten these rags in there, and had collected $1.50 a ton on them?

A. Yes.

Q. What has become of the patent? Who owns that now?

A. The Paper Stock Disinfecting Company.

Q. Have you a lien on it?

A. No.

Q. Have you anything to do with it now?

A. I have the use of it—of the use of that patent until the 1st of August of this year.

Q. Is there a written agreement to that effect?

A. Yes.

Q. Was this contract canceled by written agreement?

A. No.

Q. How was it canceled?

A. By virtue of another contract taking its place.

Q. Where is that contract?

A. I think my counsel has it.

Counsel for defendant produces the agreement or license of August 1st, 1885, on the call of plaintiffs' counsel.

Q. You were generally active in pursuing any rags that came into this port, and seeing that they went to your warehouse?

A. No, sir.

Q. Did you not go to Philadelphia after the cargo of the Lucy Nichols?

A. I did not.

Defendantss' counsel: You called for that paper.

Plaintiffs' counsel: Suppose I did; I have the right to call for it.

Defendants' counsel: I know you have: and I have a right to insist upon its going in evidence.

The Court: He has no right to look at it, if it is a private paper, without putting it in evidence.

Plaintiffs' counsel: I will put it in evidence.

Mr. Cochran reads the said paper in evidence, and it is marked Plaintiffs' Exhibit D.

Q. Tell us what that is about?

205 Defendants' counsel: It is a license by which the firm of E. B. Bartlett & Company is given the use of this process for disinfectant on a royalty.

Q. What is the amount of the royalty?

A. $1 per ton.

Q. Does it carry with it the use of the machine?

A. I do not think so.

Q. Did you go to Philadelphia after the cargo of the Lucy Nichols?

A. I did not go there after the cargo of the Lucy Nichols; but I did make an offer to the board of health of Philadelphia to disinfect the cargo of the Lucy Nichols.

Q. Did you go to Philadelphia to make that offer?

A. I did.

Q. The rags of the Lucy Nichols belonged to Lockwood & McClintock, did they not?

A. I think they did.

Q. Did you not know that they had been consigned to this port, but that in order to dodge your disinfecting apparatus they went to Philadelphia?

A. I do not know why they went there. I do not know anything about the dodging, in relation to Lockwood & McClintock.

Q. Do you know they did go to Philadelphia and you went around to the board of health and offered to disinfect them there?

A. I did.

Q. Did you make any representations to the board of health calculated to prevent those goods being let in at Philadelphia?

A. I think I did, in presenting my offer.

Q. And this was done as an officer of the disinfecting company?

A. No, sir.

Q. In what capacity were you there?

A. Under that license we were doing business then in New York.

Q. Was this after August, 1885?

A. I think it was.

Q. Are you sure?

A. I am very positive it was.

Q. And you went around and made this offer to the Philadelphia company?

A. To the Philadelphia board of health.

206 Q. Were you any more active after August, than you were before in the matter?

A. No.

Q. Just the same? You went to Philadelphia after that cargo? You went to make an offer there, just as you went to Washington when it became necessary to get hold of this cargo?

A. No, sir.

Q. What difference is there between the two acts, as you understand it?

A. I went to Philadelphia upon business connected with my warehouses; and while I was there, I went before the board of health and made that proposition, with whatever statements I had to make. In that respect, that visit differed from my visit to Washington. It was not this alone that called me to Philadelphia.

Q. But, being in Philadelphia, you took occasion to go before the board of health; and did you not state, in that connection, that these rags were infected?

A. I think not.

Q. Did you not state to the board of health that it would be dangerous to allow them in Philadelphia?

A. I do not think I did.

Q. Did you not make any statement of any character which was calculated to prejudice their chances of admission?

A. I think I said to the board of health that these rags originally were entered at the port of New York; but that the health officer there had declined to allow them to enter there. I think that is all that I stated, and that if it was their pleasure to have that cargo disinfected, I would like, among the other offers that were to be made to that board for disinfecting that cargo, I would like to have our offer entertained.

Q. Did you do anything, or say anything, that was calculated to make it their pleasure to disinfect them?

A. I do not know that I did.

Q. Did you not state to Mr. McClintock that, though it cost you $10 per ton, you would disinfect those rags, because he had
207 sent them to Philadelphia instead of paying your charge in New York?

A. I did not; that is absolutely false.

Q. But you did go to Philadelphia and make an offer, if it was the pleasure of the board?

A. I did.

Q. The board did not disinfect them?

A. They did not.

Q. Before this regulation had been issued by the Treasury Department did you ever have an interview with Mr. French or Mr. Coon, in company with Dr. Smith? I mean the regulations of December, 1884; or about any regulations.

A. I do not think I did.

Q. Would you not know that?

A. Yes; if I had.

Q. Then do you mean to swear that you did not?

A. I did not have that interview.

Q. Did you have any interview?

A. No, sir.

Q. You never had any interview with any officials of the Treasury on this subject, in connection with Dr. Smith?

A. That was not the question.

Q. I put it in that way now.

A. I did.

Q. When was that?

A. At the Ebbett house, during the session of the National Conference of Health. Mr. Coon met me on his way down in the morning, and simply stepped in. At that time I was in the vestibule of the Ebbett house, and when Mr. Coon came in I saw Dr. Smith, and introduced Mr. Coon to him. Mr. Coon had previously known him. I think that was the only interview I had with Dr. Smith.

Q. Was there any discussion there?

A. Not while I was present. I left them at once. I remember that distinctly.

Q. Was Mr. Dutcher in Washington at that time?

A. I think not.

Q. Will you say that he was not?

A. No; I will not say that.

Q. Did you have any interest in Washington there at that time?

A. I was there with my family.

208 Q. Did you have any business interest to look after?

A. Except the general interest that I had in disinfecting, under that contract.

Q. That interest was with you there?

A. Yes.

Q. Was Mr. Dutcher there looking out for it?

A. I do not think he was.

Q. Whom did you see while there?

A. I remember seeing Dr. Smith, Dr. Raymond, Dr. Lindsley, Mr. Scott Smith, Dr. Herrick, Dr. Walcott, and I think, Dr. Baker. I think that was all. There may have been others.

Q. You were discussing the question of disinfecting there with those gentlemen?

A. No; I was not. I did not even discuss the action of disinfecting, with Dr. Raymond there.

Q. I understood you to say that you had a general interest in Washington at this time, about these regulations?

A. I had a general interest in Washington at that time, and did not discuss that with these gentlemen.

Q. Did you discuss it with anybody?

A. Yes.

Q. With whom?

A. Mr. Scott Smith and Mr. Walcott, and Mr. Woolworth Graham, of Woolworth & Graham, large paper importers and contractors, and I may have seen some others.

Q. Mr. Scott Smith was the gentleman who made the affidavit that these goods had not been shipped before the first of January in Japan?

A. Yes.

Q. And it was the same gentleman whose affidavit was afterwards in the possession of the health officer when he decided that these goods ought to be disinfected?

A. Yes; he was the secretary of the Paper Stock Company.

Q. Who procured that affidavit from Mr. Scott Smith?

A. I never knew he had made it until it was read in the court-room.

Q. You knew of the fact that he had made an affidavit?

A. I never heard that affidavit, directly or indirectly, at any time before I heard it read in this court-room.

209 Q. You knew that the action of the health officers, which resulted in the collector ordering those goods to your storehouse to be disinfected, was based upon that?

A. I did not know it.

Q. You know it now?

A. I know that you say so.

Q. Did you not hear the evidence given here in this court-room which recited that letter of Dr. Smith?

A. I heard the letter read.

Q. Have you heard this affidavit from Scott Smith referred to in the correspondence read here?

A. I have forgotten, there has been so much of it. I have been in the court-room during the entire trial, and if it has been read I have heard it.

Q. Do you not know that it has been read—the affidavit?

A. I have heard the affidavit read.

Q. Have you not heard it stated in evidence that Dr. Smith based his refusal to allow these rags to be landed upon the affidavit from Scott Smith?

A. I do not remember. If it has been read I do not remember it.

Q. Do you remember having had an interview with Dr. Smith and Mr. French, the Assistant Secretary of the Treasury?

A. I do not.

Q. Will you say that you did not have such interview?

A. No; I will not say that.

Q. You know that you did discuss to a great extent with the Treasury officials and with Dr. Smith about the disinfecting of these imported rags?

A. I have not said anything of the kind.

Q. I ask you now. Did you discuss with Dr. Smith and with the Treasury officials the propriety of establishing regulations preventing the importation of rags without their being disinfected.

A. I *I* do not remember any such conversation.

Q. Have you not said that you conversed with Dr. Smith on the subject?

A. I have.

Q. Have you said that you conversed with the Treasury officials?

A. The inference, from your question, is that I conversed with them together.

210 Q. I have not said so; and if there be such an inference it can be taken out of your mind. I ask you now, as matter of fact, if you have not, at different times, discussed this question as to regulations being established by the health authorities here relative to the importation of rags, with Dr. Smith and with various Treasury officials?

A. I have not with various Treasury officials; I have with Dr. Smith?

Q. Have you with any of the officials of the Treasury?

A. I have never discussed with them; I have spoken of those regulations with Mr. Coon.

Q. Have you not written on the subject?

A. I do not remember that I have written.

Q. Have I not called your attention to one letter?

A. I remember that letter.

Q. Have you not written several letters?

A. I do not remember that I have.

Q. Will you say that you have not?

A. I will not say so; no.

Q. You have heard the testimony of Mr. Fairchild, the Secretary of the Treasury now, and then Assistant Treasurer, to the effect that Mr. Dutcher had visited him, and had urged upon him the importance of providing against the danger of infection by putting the rags through a process of disinfection before they were landed—have you not?

A. I heard Mr. Fairchild's statement. I think that Mr. Dutcher was present at the interview referred to.

Q. Have you heard Mr. Fairchild answer to the effect that before this Mr. Dutcher had visited him?

A. I do not remember that part of the testimony. My impression was different.

Q. Did you ever send Mr. Dutcher to Washington on this business?

A. Yes.

Q. You sent Mr. Dutcher to see the Secretary of the Treasury?

A. No.

Q. Did you send him to see any Treasury officials about it?

A. No, sir. Mr. Dutcher has gone there with general instructions.

Q. What do you mean by general instructions?

211 A. To go to Washington and to see if there was anything new in this matter; that is all.

Q. And do the best he could?

A. No.

Q. Do you mean to say that he went there simply to get information, or to do something?

A. To get information; and if it required that he should do anything, to do it; but he had no instructions to that effect; but simply to go there for information.

Q. His instructions were to go there for information, and if it became necessary to do something, to do it?

A. Yes.

Q. I suppose you expected him to do the best he could for you?

A. We always expect that.

Q. What is his business?

A. He is president of one of our large savings banks.

Q. What is the name of it?

A. I do not remember the name; I can tell its location; it is on the corner of Broadway and Sixth avenue, at the junction with Thirty-second street.

Q. The Union Dime savings bank?

A. I do not remember the name; I give you the location.

Q. He is the president of that bank?

A. Yes.

Q. And yet he has been in your employment for years?

A. I did not state that he had been in my employment for years.

Q. I think you said for a great many years?

A. I think that I said "for some time."

Q. Was he in your employment in Albany, Washington and New York, during a great many years?

A. No, sir.

Q. How long was he in your employment?

A. For two years.

Q. Was that part of the time covered by these transactions?

A. Yes.

Q. What was his business then?

—. I do not know, beyond the being in my service. He received a stated salary per year in my service.

Q. You do not know what his business was?

A. In my service, I do.

Q. What was his business in your service?

212 A. He would go to Albany to look after legislation that effected our interests as warehousemen.

Q. That might be called lobbying?

A. You may call it what you please, perhaps you are more familiar with that than I am.

Q. I do not think so. I am asking the question.

A. All right then. He was in Albany looking after our interests, for bills are constantly introduced in Albany affecting our interests as elevatormen and warehousemen. At this time it was the case, as it is now; bills against the interests of elevatormen and warehousemen in Brooklyn have been introduced in the legislature every year for the past six years, and the elevatormen have had a great deal to do. Mr. Dutcher, for a number of years, has assisted the elevatormen in New York in defeating those bills in Albany. In addition to these elevator bills, we are constantly obliged to look after, in Albany, what are known as wharfage bills. It may not be known to all of you that there is a statute by which a certain wharfage is placed upon every ship that comes up to our docks. That wharfage is placed by statute. Every year, for a number of years past, there have been bills introduced in Albany, as we say, "strikers," reducing that rate of wharfage 25, 50 or 75 per *per* cent. There is a bill there now reducing the rate of wharfage at our docks. It reduces it certainly 60 per cent. on our present charges. Various other bills of that kind are constantly being brought before the legislature in Albany, and in Washington, bills referring to the tariff are introduced, which very seriously affect our interest as warehousemen. And, in many different branches of the Government things are constantly arising which we have to care for in order to protect ourselves, our wharf interest and our warehouse interest. For these services and many others of a kindred kind, Mr. Dutcher was employed.

213 Q. Such as this rag business, for instance?

A. This was a part of it.

Q. You have said that certain bills were introduced in Albany as "strikes," and that Mr. Dutcher was sent up, in some way, to prevent the strike, is that it?

A. No, sir.

Q. You have simply described now what the legislature or certain persons in it did in the nature of striking. I have not yet heard what Mr. Dutcher did.

A. Mr. Dutcher would go to Albany—take the wharfage bill, for example. He would go to Albany, and with his large and extensive acquaintance with the members of the legislature he would argue with them about it—about the unrighteousness and the wickedness of that bill.

By defendants' counsel:

Q. Would he go before the committee and make his argument?

The Witness: It was his duty also to go before the committees, when bills were referred to them, and make arguments before them with reference to those bills.

By plaintiffs' counsel:

Q. And Mr. Dutcher was the person whom you selected to show the unrighteousness to the unrighteous, as it were?

A. You may place your own interpretation on that.

Q. Were Mr. Dutcher's services entirely confined to pointing out the unrighteousness of certain legislations?

A. As far as I know.

Q. That is all you attribute it to?

A. Yes.

Q. And you were able to overcome the strikers by reason of Mr. Dutcher's efforts?

A. I wish I had been.

Q. Have you been the victim of strikes?

A. Yes, sir; a great many of them.

Q. What was Mr. Dutcher's general business besides pointing out the unrighteousness to members of the legislature—at that time?

A. I know nothing beyond that.

Q. Was he not a lobbyist?

A. Not that I know of.

Q. What did you pay him for?

A. For services.

214 Q. Such as you have now described?

A. Yes.

Q. For services around the legislature such as you have described?

A. Yes.

Q. And for nothing else?

A. For nothing else.

Q. You kept him constantly in your employ for two years?

A. Yes, for nearly two years.

Q. The years 1884 and 1885?

A. I think a part of the time was in 1883. In 1884, certainly, and 1885. Certainly those two years, 1884 and 1885, principally for the legislature business.

Q. Who is the Martin E. Berry mentioned in this instrument?

A. A clerk in our employment.

Plaintiffs' counsel: I want to offer in evidence the certificate of incorporation of this company and the report of the putting up of stock.

Said papers are marked Exhibits W and X.

Redirect examination.

By defendants' counsel:

In the process of disinfecting these rags the Paper Stock Company paid the men who were engaged in the process of disinfection itself. I think the rent we paid for the Baltic stores as lessee was about ten thousand dollars per year.

Q. Something has been said by Mr. Cochran about your meeting Dr. Smith at the office of the quarantine commissioners in New York. Is the New York office of Dr. Smith at the same office as that of the quarantine commissioners?

A. Yes.

Q. The name of Mr. Platt has been brought into this controversy, and you were asked whether you had a conversation with Mr. Platt in connection with the health offices, in respect to sending rags to the Baltic stores for disinfecting.

A. I never had.

Recross-examination by plaintiffs' counsel:

Q. Mr. Platt had some authority in that direction?

215 A. As quarantine commissioner he may have had. I do not know the powers of the quarantine commissioners.

Q. Did you not understand that he was a gentleman interested in that subject?

A. Yes.

Q. You met Mr. Platt a number of times?

A. Yes; long before this.

Q. And at this time?

A. Yes.

Q. You are quite intimate with him?

A. Yes; but I never mentioned the subject of sending rags for this disinfecting process, nor subjecting them to any process.

By the Court: One of the jurors wishes me to ask this question: Whether you stated this morning that you insisted upon a demonstration of the usefulness of this patent in disinfecting, before you invested any money in the company.

A. Before I would take any active part in this company I stated to Mr. Parker, that I would require a thorough test of this process in the presence of competent scientists and men of repute and reputation, and that if it failed I would not go into the enterprise. I wanted to be satisfied first of the honesty and efficiency of this process. It did not seem to me as if it were possible that you could bore into a bale of solid or loose rags, and close it up according to diagrams presented to me, and then register that amount of steam in those bales, so as to kill the germs lying upon the surface of those bales. I did not believe it. I did not believe that it was possible that the steam could so far permeate that bale of rags as to affect and kill the bacteria, or spores, or germs, which he told me were the hardest subjects to kill. I did not think it possible. When I afterwards read the report which was published officially in the Medical News, of Philadelphia, setting forth the entire experiment there, with the announcement at the end, of its success, I was amazed.

Q. Before that you refused to accept the stock?

A. No, sir; I refused to take any active part. I had received
216 the stock, but I refused to take any active part until I
had been satisfied with that experiment. And more than that—they told me (that is Mr. Parker did) that they had made the experiment and that it was entirely successful. I told them that I preferred to see it for myself; and although it would cost several hundred dollars to make it, to construct this engine, boiler or superheater temporarily, I would bear the entire expense of it. And I bore the expense of that experiment and paid it after the result was perfectly satisfactory.

By defendants' counsel:

Q. You mean the mechanical expense of it?

A. Yes.

Q. You are not speaking of the expense of the experts?

A. No.

By juror No. 9:

Q. The second part of that reconciles it with the statement made this afternoon that they received this stock as a gift in the previous November.

The Court: The witness now says that he received the stock before, but refused to take any active part in the company, or to make a contract, until he had made those experiments.

The Witness: If I did not say that I meant to. I meant to state that I would not participate as a director in the corporation when I did not know of the efficiency of this process.

By juror No. 7:

Q. There were two bills shown us from the New York Disinfecting Company. What is the difference between that company and the Paper Stock Disinfecting Company?

A. The Paper Stock Disinfecting Company was the parent company. That company sold these rights to other companies. They sold that right to the New York Company for a royalty of $1 per ton; and the New York Company assumed, as I understood
217 at that time, all the indebtedness of the parent company in
consideration of receiving a license.

Q. How much of the Paper Stock Disinfecting Company was subscribed? A half million dollars was the capital stock, as you said.

A. I do not know anything about that.

Counsel for defendants: It was all paid for the patent itself.

The Witness: I think it was all paid for the patent.

Juror No. 7: I do not mean to ask how much was paid, but how much was subscribed for.

The Court: It is said that the whole stock was issued for the patents.

By plaintiffs' counsel:

Q. You have said now, in answer to a question of the juror, that you declined to take any active steps about this matter whatever, until you had been satisfied by these experiments. Am I correct?

A. Yes; excepting the word "whatever." I declined to take any active part as director. I will let it go at that.

Q. I understood you to say, in answer to the question of the juror, in explanation of your testimony of this morning, that you had declined to take any active part in this concern until you became satisfied of its honesty. You did take $40,000 worth of shares. You took those without being quite so sure of its honesty. When did that experiment take place?

A. I will try to give it to you exactly. (Refers to a paper.) It was in January.

Q. In view of that answer, I again direct your attention to this letter of the Secretary of the Treasury, which declares that on the 15th ult. (the 15th of December) Mr. E. B. Bartlett had addressed a letter to the department on that very subject.

A. I did address that letter before the Secretary of the Treasury issued his order of the 22d.

218 Q. Then you were active to that extent?

A. Not as director of the company.

Q. You make a difference between being active as a director and active as a shareholder?

A. I do. I think I can answer that question by saying that the impression I wished to convey is this: that I declined to take the directorship, or to assume any activity in that regard in the company, until I was satisfied of the value of this process; and this experiment which has been referred to occurred on the 9th of January, 1885.

Q. But before you became satisfied you tried to get the Treasury Department to adopt it?

A. No; I did not.

Q. What is the meaning of that letter?

A. Read the letter.

Q. I will read it to you. "Under date of 15th ult. (which is the 15th of December) Mr. E. B. Bartlett addressed a letter to this department touching the selection of a warehouse for the storage of imported old rags for the purpose of having them disinfected in the manner proposed by the circular of the 22d ult." Did that refer to the disinfecting business?

A. That referred to the disinfecting company's business in case the order was issued by the Secretary. I applied to have it placed at our warehouse, but I took no active part until I had seen the test made.

Q. You were sufficiently active to write that letter.

A. That letter was written.

Q. That letter was written to try to get the Treasury Department to adopt that process?

A. I applied for the location of that process at our warehouse.

Q. Was it not this same process that you referred to?

A. It was the same process which the Treasury Department referred to in the circular of December 22d.

Q. Was it the same process that we are mentioning as that of the disinfecting company?

A. It is identically the same.

219 Q. Then you were active in recommending that process on the 15th of December?

A. Not as a director in any company.

Q. What difference would there be between a recommendation made by E. B. Bartlett, director, and one made by E. B. Bartlett, shareholder?

A. I think there is the difference which I have explained before the jury.

Q. You declined to take any active part?

A. Nothing until the experiment.

Q. Did you say here this morning that you declined to do anything whatever toward having this process adopted by the authorities until you became satisfied that it was a process that *it* would be effective, and was an honest invention, and controlled by an honest company?

A. I do not think I made that statement.

Q. If you did make it do you now desire to withdraw it?

A. If I made that statement I will withdraw it.

Q. Will you say that you were active in trying to get it adopted by the Treasury Department before the test had been made?

A. I was not active beyond that letter, trying to have the works stationed at the Baltic stores.

Q. A juror has asked you a question concerning the second company that came in; and you said, if I mistake not, that the New York Disinfecting Company is the successor of the Paper Stock Disinfect- Company.

A. In the port of New York; that embraces Brooklyn and New York.

Q. That Paper Disinfecting Company—the New York Disinfecting Company—controls the same process and is now run in the Baltic stores?

A. No, sir.

Q. It was run there in the months of August, September, and October, 1885?

A. No, sir. The disinfecting of rags in the Baltic stores was cleared out by Dr. Raymond in June, 1885.

Q. Up to that time what company was there?

220 A. I think the Paper Stock Company, but I am not positive.

Q. The New York Disinfecting Company succeeded the Paper Stock Disinfecting Company?

A. Yes.

Q. It was the New York Disinfecting Company that did this particular disinfecting?

A. No.

Q. It was there bills which were here?

A. No.

Q. Was it not they that sent the bills?

A. They sent bills to us.

Q. Who were the New York Disinfecting Company?

A. They were the successors.

Q. Who were the men? Were you one of them?

A. Yes.

Q. Was Mr. Clark, who had this contract here, one of them?

A. No.

Q. He is licensed to use these machines over there?

A. No.

Q. By what right did you use those machines there?

A. Because he gave his verbal consent.

Q. Is not that practically giving them over to you?

A. That is not an assignment.

Q. I am not speaking of an assignment in law.

A. If you are not speaking of that then it was an assignment to me.

Q. So that that Paper Stock Disinfecting Company, as you describe it, the parent company, transferred to your clerk a right and license to use these disinfecting processes; and a new company was organized, you being one of the organizers, and this clerk of yours then handing over to the new company the right which he had under that contract? Is that correct?

A. No, sir.

Q. State exactly how it did come about.

A. You have the boot on the wrong leg. The Paper Stock Disinfecting Company was the parent company.

Q. The Paper Stock Disinfecting Company seems to have been the offspring of Parker, and the nephew of this witness. Then, in the month of June the parent company assigned the right to 221 use this process to the gentleman whose name appears here somewhere?

A. That is all in the paper.

Q. The paper says, "Whereas the said Paper Stock Disinfecting Company did, on the 9th day of June, 1885, license and authorize Martin E. Berry, his heir, administrators and assigns." Now what do you say?

A. I do not think that is the original paper.

Q. It was handed to me by your counsel as being the original paper.

A. Let me look at it. I have not seen it yet. (After examining the paper.) This is not the original paper.

Q. Do you say it was not on the 9th of June, that that company licensed Berry?

A. Supposing you read that paper and be sure, it tells its own story.

Q. I will read that part for the present. I will not take the trouble to read it through. This paper bears date August 1st, 1885, and it recites that on the 9th of June, 1885, the Paper Stock Disinfecting Company gave license, authority and permit to Martin E. Berry, his heirs, executors, administrators and assigns, solely and exclusively to make, use and sell said improvement in apparatus for disinfecting old rags and other fibrous material, as well as an exclusive right to make and use said improvement in the process of disinfecting rags under said letters patent in any and all parts of the port of New York. Now on the 9th of June was Martin E. Berry in your employment?

A. He was.

Q. And on the 9th of June, according to this document, he was licensed by the parent company to do the disinfecting?

A. I do not know that he was. Read the paper through.

Q. I have read enough to satisfy you, have I not?

A. No, I want to hear the whole document.

Q. They did, some time or other, license him, did they not?

A. Yes; but he never did any work under that license.

222 Q. I do not ask you that. He was the only person under that paper authorized to act?

A. I do not know. Read the paper through.

Q. I understood you to say that he never did any work; who did the work?

A. The Paper Stock Disinfecting Company.

Q. After the Paper Stock Disinfecting Company had transferred the right to do this work over to Martin E. Berry, where was it done?

A. I want to see the transfer from the paper itself.

Q. I will have to deny you that paper. Please answer the question as it is.

A. I do not know.

Q. Was it done by your firm?

A. Yes; after that, commencing August 1st, 1885, our firm did it.

Q. After this license was given to Martin E. Berry, was the work of disinfecting done by your firm?

A. A long time after that, commencing August 1st, 1885.

Q. Who did the work between the time that Berry obtained the license and gave it to your firm?

A. The Paper Stock Disinfecting Company did the work up to August 1st, 1885.

Q. You adhere to that statement notwithstanding the fact that this instrument, produced by your counsel, recites that on the 9th of June, 1885, the Paper Stock Disinfecting Company had turned over to Martin E. Berry the sole right and authority to use that process in the port of New York?

A. I do.

Q. After Martin E. Berry got control of the process did he ever use it on his own account?

A. He did not.

Q. Your firm used it?

A. After August 1st, 1885, the transfer from the Paper Stock Company which that instrument shows, if you will read it through.

Q. Let us not get confused on the question of date. Let us stick to the facts as we recollect them. After this man, Martin E. Berry, obtained control of this process, whenever it was, was the 223 work done by your firm?

A. It was done by our firm after the 1st of August, 1885, and not before—at no time.

Q. Did Martin E. Berry ever exercise the right, privilege or license given to him in that instrument?

A. He never did.

Q. Then from whatever time he got it he gave it to you right away?

A. He did not give it to us at all.

Q. How did you get it, if at all?

A. That instrument will show.

Q. Was the work going on all the time?

A. All the time after August, 1885.

Q. A new company was then formed?

A. When?

Q. Somewhere around August, 1885, we will say?

A. No; not a new company.

Q. When?

A. I do not remember the date of forming the new company.

Q. You have such an excellent memory of dates I wish you would give it as accurately as you can.

A. I will give you the date if you want it. On August 1st, 1885, our firm E. B. Bartlett & Company received a transfer from the Paper Stock Disinfecting Company—a license—and have been doing that business under that license up to September, 1886, since which time we have done no business whatever.

Q. When did you form the new company whose bills are in here?

A. I did not form any new company.

Q. Did you not say that you were one of the persons who formed the new company?

A. I said that I was a stockholder in that company. I forgot the date of it.

Q. Did you have anything to do with the formation of it?

A. My impression is that I did not.

Q. Were you not one of the incorporators?

A. I think not.

Q. Were your firm members of the corporation?

A. I do not remember about that.

Q. Were you a stockholder?

A. Yes.

224 Q. To what extent were you a stockholder?

A. I do not remember.

Q. Can you remember whether you had half a million or five dollars in it?

A. I do not remember.

Q. Do you remember what the capital stock of the new company was?

A. No.

Q. When did you first hear of it?

A. I think it was in the summer of 1885. I will be very glad to answer this question when I can look at the original agreement; but at this moment I cannot answer, for the reason that I think I was up in the woods at that time.

Q. Whatever it was the money that was paid for disinfecting rags in every instance was collected by you or by your firm?

A. In every instance? Oh, no.

Q. How was it collected when you did not collect it?

A. By the Paper Stock Disinfecting Company.

Q. Then in the case of the Vigilant and the Battaglia, where you collected Lockwood & McClintock's money—that was not a general rule, but just a circumstance peculiar to that one transaction.

A. All the money collected for the disinfecting business, up to the 1st of August, 1885——

Q. I am asking whether you received this money under a general rule, or whether it was peculiar to that transaction?

A. It was peculiar to this transaction.

(By counsel for defendant:)

Q. Why was it peculiar to this transaction?

A. Because the Paper Stock Disinfecting Company had sold us the license after the 1st of August, 1885. The case was in controversy at the time, and a certain amount was unpaid at that time, and as a part of the claim which the company made the company passed over to me, which I paid them for and assumed; and that is all. That was August 1st, 1885, I think.

225 Q. And you never, as I understand you, under the agreement of August 1st, 1885, either individually or by your firm, disinfected any of the rags by the Vigilant or the Battaglia?

A. We never did.

Q. Your attention has been called to the first clause of the letter from the Treasury Department, annexed to the commission under date of January 12th. Please read that sentence.

A. (Reading.) "Under date of 15th ult., Mr. E. B. Bartlett addressed a letter to this department touching the selection of a warehouse for the storage of imported old rags, for the purpose of having them disinfected in the manner proposed by the circular of the 22d ult."

Q. Look at the circular and say whether the manner proposed in that circular of December 22d, embraces not only the disinfecting under the process of the Paper Stock Disinfecting Company but three other processes.

A. Yes.

Q. And is it true, as intimated by counsel for plaintiff, that the process referred to in your letter referred solely to the paper-stock disinfecting process, or to other processes named in the circular?

A. To the process of the disinfecting company, and to no other process.

The Court: This letter of yours to the Secretary of the Treasury referred to this process of disinfecting?

The Witness: And having it placed at our warehouse.

—. ——.

A. Yes.

By defendants' counsel:

Q. My question is whether your letter refers to the single process No. 4 or to any process named in that circular.

A. To No. 4.

Q. Were you, previous to the writing of that letter, acquainted with the facts and the conclusions adopted and presented to the Secretary of the Treasury after the conference of the State 226 boards of health in Washington, in December, at the time when you met Dr. Walcott, Dr. Herrick, Dr. Smith, Dr. Lindsley, and other gentlemen?

A. I do not remember about that.

(By plaintiffs' counsel:)

Q. The conference of the health officers was in Washington, in December, 1884, was it not?

A. I think so.

Q. Were you there?

A. I think so.

Sixth day.

William M. Smith, one of the defendants, being duly sworn, testified as follows:

Direct examination by defendants' counsel:

I reside at Staten island, Richmond county, New York; my office is at Staten island, at the residence of the health officer, when there; otherwise 71 Broadway, at the office of the commissioner of quarantine. I am sixty years of age, and by profession a physician and surgeon; I have been in the practice of that profession forty years. I graduated in 1846; I practiced medicine in Alleghany and Cayuga counties, in this State, until 1853, when I came to New York and attended the New York City hospital and other hospitals; the New York eye and ear infirmary, and the New York City dispensary, for several months of that year, when I resumed my practice until about 1861. At that time I was authorized by the governor of the State to examine recruits at the rendezvous in Elmira. I attended to that service until commissioned as surgeon in the 85th regiment of volunteers. I accompanied that regiment to the field, and continued with them. I was partially detached, though having the regiment under my own observation as acting surgeon of Palmer's brigade, during the Peninsular campaign. After this campaign, 227 I was engaged with my regiment at other places in Virginia and North Carolina. In the latter part of 1862 and the early part of 1863, I was surgeon-in-chief of the district of the Albemarle with the post hospital of Plymouth under my own immediate charge. I continued in that service until the latter part of the year 1863, when I resumed my practice in Alleghany county and continued at that time, with intervals, as I was engaged by the duties of surgeon general on Gov. Dix's staff. After which I continued my practice until I was appointed health officer at the port of New York, on March 24, 1880.

Q. What has been your experience in respect to contagious diseases and diseases epidemic?

A. I have seen the full share of a man who has been engaged in the practice. I have not an extraordinary experience until since my appointment to the New York quarantine, when it has necessarily been very much larger.

Q. What action did you take in 1884 and 1885 to inform yourself of the best course for the protection of the public health in reference to contagious diseases and contagia from abroad?

A. My apprehensions were excited very much a year earlier than that, in 1883, at the advent of cholera in Egypt, when the large amount of rags that were being imported from there induced me to restrict the importation of that article at this port, until the authorities at New Haven were notified, for which port they were destined, when they passed on, subject to the supervision of the authorities at New Haven. Early in 1883 it was, that they passed through this port.

Q. Do you know under what section of the law they went to New Haven?

A. Well, sir, I don't know under what section of the law. All the vessels that pass through the harbor are subject to the supervision of the health officer, no matter to what port they go, as I understand the law.

228 Q. I was going to call your attention to section 19, about a vessel's putting to sea, and going to another port?

A. Ah! I understand. Where a vessel has not broken bulk, under section 19 of the Laws of 1863, a vessel has the right, if she does not choose to subject to the restrictions of the health authorities or the health officer, to proceed to sea.

Counsel for defendants reads the section referred to.

Q. Can you state whether there are often dangers of infection and contagia from imported old rags in your port. If so, of what disease?

A. I believe that there has been from small-pox; from cholera, and from all contagious diseases to which a human being is subject.

Q. What was the best opinion among sanitary and medical officers in 1885, as to the dangers of contagia from imported old rags?

A. From a great number of them there was a very great apprehension.

Q. (Repeated.)

A. There was great apprehension of danger, and it was believed that there was a necessity for some escape from that danger; there was a necessity for disinfection for all disease contagious or infectious; cholera, yellow fever, small-pox, dip-theria, scarlet fever, malignant pustules; I may say those were the principal diseases; as to the necessity of disinfection somewhere of imported old rags, I know of no difference of opinion among sanitarians or medical health authorities; I made inquiries and very diligently searched for information on all sides.

Q. Have you ever found any sanitary authorities and health officers that, for the years 1884 and 1885, thought that there was any question of the necessity of disinfection somewhere and at some place?

A. No, sir; in some form.

Q. What were the sources of your information then and since?

A. The resolutions of the health board of conference, of sanitary
conferences; conferences, I mean to say, of health authori-
229 ties, of reported cases in medical journals, reports of dele-
gates to health conferences, health congresses, individual communications of the experience of parties in epidemic cases which were induced by rags; the results of these inquiries have been printed.

Q. Can you now state how many instances, or in how many places such dangers have appeared and such epidemics been occasioned?

A. It would be very difficult to state the number; I may say, if my memory serves me, that the cases reported are from the delegates in the Congress Hygien, at the Hague, Berlin, Toulon and Rome; from medical journals, and with British medical journals, so far as my research has gone, shown in ten or twelve reported cases.

By the Court:

Q. Did you have these reports at that time?

A. I did, sir.

To defendants' counsel: I knew of the report in the Massachusetts State board of health in 1872 and 1873—13 months of that year—reporting 192 cases of small-pox traced to the paper mills. I knew of the local medical governing board of England report in relation to the development of diseases under its supervision.

Q. What information did you have from Scotland as to the disinfecting of rags and the outbreak of small-pox among workmen?

A. I knew it was reported that there had been such outbreaks.

Q. And were there any reports from Amsterdam, Dresden, Lyons, and these other places mentioned in this report?

A. Yes, sir; I remember them as they are called off there, but the names I couldn't repeat otherwise.

Q. And had you any reports of rag-pickers' disease from Lower Austria?

A. Yes, sir; a report of Dr. Hoffman, a delegate to the International Conference.

230 Q. Do you remember any particular case—that of Mrs. Hayes?

A. I don't remember the name.

Q. Have you any recollection of an epidemic in Ypsilanti?

A. I do. I may say that much. I remember the report made by letter and in person of the secretary of the State board of health of Michigan in relation to a case of small-pox at Ypsilanti as long ago as 1876, in which the health officer of that city begs of the secretary for some means of arresting the contagion spread by those rags. There were a large number of papers and communications in local journals on this subject. In reference to cholera, I had in my mind reports and information of facts in relation to cholera communicated by clothing.

Q. Have you any recollection about the case that John Barnes reported in the Lancet, or the case in the county of Bedford, in 1854?

A. I don't recollect it distinctly.

Q. Did you visit Washington, or were you called to Washington, in December, 1884, in relation to this subject of dangers from imported old rags?

A. No, sir; I wasn't called there for that purpose. I was the representative of the State board of health of New York at that conference of State and municipal board of health. The subject of the conference was the prevention of cholera, above all others. And so far as it related to old rags, that was the subject of the conference; it was mentioned and discussed very considerably. There was some communication with the Secretary of the Treasury at that time.

Q. At whose request, and how was it, and what was said?

A. At the request of the Secretary of the Treasury. I say the Secretary of State. Those conclusions were formulated and a committee was appointed. There was a special committee appointed, but the conference referred the matter to a committee on Federal relations composed of nine persons. I don't think I can recall them all. Dr. Walcott, the president of the State board of Massachusetts, was the chairman of the committee. Dr. Herrick, of Louisiana, was a member of the committee; also, Erastus Brooks, of this State, and Henry S. Baker, of Michigan, the secretary of the Michigan State board of health. They were scattered throughout the country. 231

Q. I ask you to look at Exhibits 17 A and 17 B, in the deposition of Mr. Fairchild, and state if those two communications were the ones you have referred to as having been made to the Secretary of the Treasury at his request, about that date?

A. Yes, sir; I remember it very well.

Q. Were those the conclusions of that conference, in that Exhibit B?

A. They were.

Offered in evidence.

Marked Exhibits 27 A and 27 B, in evidence, and read to the jury.

Q. How far were these several processes mentioned in that report which I have just read identical with the processes of the circular of the Treasury Department of December 22, 1884?

A. They were substantially the same.

Q. What is your knowledge of the requirement for disinfection at foreign ports of old rags to be imported, and how far it was permitted by the health aut-orities, either at this port or the Treasury Department at Washington?

A. It has never been denied by the Treasury Department at Washington; certificates based upon the formula adopted by the Treasury Department have always been received at this port up to this time—disinfection as prescribed by one of the four forms indicated in that circular of December 22d, from the Treasury Department.

Q. Do I understand you then that where there were certificates of disinfection at a foreign port in one of these four methods, they were not subjected to disinfection here?

A. Not at all, sir.

232 Q. Your answer, my learned associate suggests, is ambiguous; were they or were they not subject to a process here if they had been disinfected abroad?

A. They were not.

Q. What have been your efforts and your conclusions in respect to the disinfection of old rags, either here or abroad?

A. It has been to receive the rags disinfected by one of the processes prescribed by the Treasury Department in its circular of December 22d, until it was proved to me that it has not been effectual; I have no such proof in any instance, though rumors.

Q. Has there at any time been any change in your opinion governing your official conclusion that disinfection somewhere was necessary?

A. Not at all, sir.

Q. Have you ever expressed a different opinion to anybody?

A. No, sir; that I remember of; I think not.

Q. Have you, within two years, had a different opinion?

A. I have not.

Q. Have you, within two years expressed a different opinion?

A. I have not.

Q. What part did you take in the conference of sanitary authorities and States boards of health and quarantine officers, in 1885, previous to the 17th of June?

A. Early in that year, and previous to April, my apprehension of an invasion of cholera was so great that I solicited a conference of the sanitarians and health officers upon the northern and Atlantic seaboard—at least a great number of them—and several of them met at the Fifth Avenue hotel on the 23d of April, 1885, for the purpose of taking into consideration the imminence of the danger from cholera and from other diseases.

Q. We have had the results of that conference in evidence; were they communicated to the Secretary of the Treasury?

A. They were, by his request.

Q. Look at Exhibit 29 and state if that was the result of that conference (handing paper to witness)?

233 A. Those are the conclusions of that conference.

Q. Were they approved by your experience and did you adopt them?

A. I did adopt them, subsequently.

By the Court:

Q. When did you adopt it?

A. I adopted it in its entirety when the Government relegated the matter to the local health authorities.

Q. What date was it; can you fix the time at which you adopted the conclusions of that conference?

A. I answered, when the Treasury Department had relegated the matter to the local health authorities; as soon as I became informed of that which was on or after the 15th of June, 1885.

By defendants' counsel:

Q. Did you concur, at that time that these were advocated, in these conclusions as there stated?

A. Most heartily.

Q. I will ask you what your opinion is of the fourth method of disinfection as compared with any other. The fourth method, as presented in this report, I mean, of the conference at the Fifth Avenue hotel, on April 23d, as follows: "That if disinfection be done abroad, it is required that either the rags be boiled for not less than fifty minutes and dried before baling, or be treated with superheated steam for not less than eight minutes in such manner as to be heated to or above 230 degrees Fahrenheit in every part." Now, my question relates to the efficacy of that method as compared with others?

A. I believe it was entirely efficient, and that was my opinion in April, 1885.

Q. What systems of purification and disinfection of old rags did you examine in 1885?

A. The system that I chiefly devoted my attention to was the disinfection by sulphurous acid gas, hoping to develop an agent for my own use; particularly at quarantine; that is called SO_2.

Q. Did you examine any other process?

A. I examined the process of injecting into the bale superheated steam.

234 Q. How came you to make that examination, and when was it, and where was it?

A. I can't tell the date when I was solicited by some young gentleman to be present at a disinfection, or attempted disinfection, of rags. I gave no attention to it, believing it was the effort often made to secure my attention to some disinfectant and then publish the fact that the health officer had recommended it. I was waited upon a second time by this same gentleman, when he said it would be better if I would look into that. What he meant I don't know, but I interpreted it as a threat. I said: "Young man, I will care for my own interests, and you tell those who sent you that I say so."

Q. When was this?

A. The last interview was at the board of health when I went there to attend a regular meeting. It was the latter part of 1884. I cannot tell you just when. A few days subsequently I met a Mr.

Weber Parker as I came off the Staten Island ferryboat, who solicited my attention to some experiments to disinfect rags in the bale. I then said: "I will attend; you may set the time." He did set a day in the near future; I think within the week. It may have been in November of 1884. I went to Centre street, in this city, to a place, the number of which I don't remember. To my surprise, I found there fifteen or twenty gentlemen assembled to witness the test. I recollect Dr. Edson, of the New York board of health; Dr. John H. Hamilton, surgeon general of the marine hospital service of Washington, and several other gentlemen. They were all strangers to me, except Dr. Edson and the man Parker, whom I had met once before. The tests were made. The machine had one screw. In connection with Dr. Hamilton we introduced the thermometer and found the heat after five minutes' introduction. We then exchanged views about it between us But we spoke to no one else in regard to our views. Our exchange 235 of views was a surprise that the bale of rags had been heated so quickly to the extent it had. A bale of rags was then introduced: this SO_2 process, not in the purified form which the chemist makes it, but from the result of the combustion of sulphur, was then under pressure put into the bale in the same box through the hollow screw. I stayed by the box, and in half a minute was driven away from it by the fumes. In about five minutes the bale was taken out; we had no evidence of disinfection through that, except that it had apparently penetrated the bale. The bale was opened and all the rags seemed to be thoroughly saturated so that we couldn't come in contact with them, or handle them—all that we examined, I mean to say. I separated from the company present without any exchange of views except with Dr. Hamilton. We manifested to each other a surprise at the result I knew the degree of heat that was reached; about 196, I think. It was not up to the boiling point of water.

Q. Did you attend a subsequent experiment, and did you cause that process to be examined; and, if so, how?

A. I received a letter some little subsequent to this from Dr. Hamilton, asking me if I would report to him my views upon that experiment. I did so, taking exception to the amount of heat produced, but suggesting that a multiplication of screws to distribute the heat more equally would probably result in producing a much greater heat throughout the bale. I heard nothing more of this until a letter from the Secretary of the Treasury or the assistant secretary, soliciting my opinion as to the location of the plant for the disinfection of rags in New York or Brooklyn. Before replying, knowing that the water front of Brooklyn was more extensive and unoccupied, I personally visited Dr. Raymond, and told him what I had received, and — asked me to go with him and examine the water front.

236 Q. Wasn't he mentioned in the same letter from the Secretary of the Treasury?

A. I think not. I think the communication was made to me at that time. We did visit several of the large stores down towards the

Erie basin, and determined that what is known as the Baltic stores, being isolated from the population above it, and situated between two streets, would be a very proper place. But in the conference with the Doctor, I said to him, "I do not propose to accept any method that is not proved to be conclusively efficient," and suggested that Dr. Billings of the United States Army, who has been largely engaged in biological studies, be employed to give us a test if that was the object of putting up the plant. He agreed that was a proper way to do. We had a test. It was at the Baltic stores, on the 9th of January, 1885. I think there were about twenty present. I remember Collector Robertson, Assistant Secretary French of the Treasury Department, and a representative from the Boston board of health. I think his name is Babbitt, a man whom I had never met before. There were also present, Dr. Hamilton, Dr. Raymond and Dr. Sternberg. I want to state in this connection, the reason why Dr. Sternberg was there instead of Dr. Billings. Dr. Billings wrote me that Dr. Sternberg was more fully engaged in biological studies, and would be a better man for the purpose. I then wrote to him, and Dr. Sternberg did come. He and Dr. Raymond attended to the process. Dr. Sternberg introduced several pathogenic germs—disease-producing germs. I saw him put those into the bale, and I saw him take them away afterwards. I had a report from him. It is the experiment printed on page 399 of this pamphlet—that is, the table showing the result of the experiment.

Offered in evidence.

Marked Defendants' Exhibit 35 of this date.

237 That was communicated to me by Dr. Sternberg, but this was particularly with reference to my idea at that time of utilizing SO_2.

Q. Are those processes Nos. 1, 2, 3, 4 and 5, mentioned on this page, the specimens of the pathogenic bacilia that were put in the bale at the time of that experiment?

A. Yes, sir; both for disinfection by the SO_2 process; but the same pathogenic germs were introduced in the bale where steam was used. His letter to me said that it was entirely conclusive; that all the experiments with the germs taken had proved that they were killed by disinfection with steam, but were not killed by the SO_2 process, as will be apparent there in that table.

Q. What was your understanding as to the result of these experiments in the two processes—the steam or the SO_2?

A. That the steam was conclusively efficient.

Q. And that was the steam that was used in this machine that you saw in operation at that time in the Baltic stores conducted by Dr. Sternberg?

A. Yes, sir; with the exception that the screws had been multiplied from 1 to 3. At Center street only one screw was used. At the Baltic stores three were used. I do not remember what the temperature of the pyrometer was at the second experiment. The whole matter was under the charge of Dr. Sternberg, who experimented with the pathogenic germs. And those were the tests used to prove its efficiency. I think the thermometer was not depended upon at that time or used, to my recollection. I think the pyrometer did indicate the heat where it went into the bale and within the box. It was very considerably in excess of 212.

Q. Did you at that time determine in your mind what were the efficient methods of disinfection of old rags—in January, 1885? And I beg to be understood that my inquiries will be directed to
the time between January 12, 1885, and June 17, 1885. Did
238 you at this time determine which were the efficient methods
for the disinfection of old rags in this port?

A. The basis of my action subsequently was the report of Dr. Sternberg that it had been entirely effectual in killing all the germs introduced in the bale.

Q. You have stated that you began with a predilection for the use of the sulphur process.

A. Yes, sir.

Q. What was the result of those experiments in comparison of the two methods for thoroughness of the disinfection of old rags; the sulphur process or the superheated steam?

A. The steam process as reported by Dr. Sternberg.

Q. Have you ever sought directly or indirectly to aid in any monoply for the disinfection of old rags in this port?

A. Not in the remotest degree.

Q. Have you ever attempted to influence any of the United States officers, either here in New York or at Washington, in the adoption of measures to secure to any one the business of disinfection?

A. Never.

Q. Have you made any report or suggestion either to the Secretary of the Treasury or to the collector of the port, except in answer to a request from them on this subject?

A. No, sir.

Q. Have you ever volunteered as an individual any advice or direction to either the United States Treasury Department or the collector of the port?

A. Never.

Q. I would like to ask you if you have ever received any benefit or pecuniary consideration, or any promise whatever of any kind of any benefit from this business of the disinfection of old rags?

A. No, sir, not a farthing.

Q. Has any been offered to you in any way?

A. No, sir, not any, or any suggestion of any kind.

Q. Have you had any consultation with Mr. Bartlett or with any of the defendants in any way touching such a result or benefit or interest to you?

A. No, sir.

239 Q. Has it ever been a subject of conversation between you?

A. No, sir; never.

Q. Have you had any conversation with Mr. Bartlett or with any of the defendants in respect to the securing of the business of the disinfection of old rags to him or his associates?

A. Not a word.

Q. Or to the Baltic stores?

A. Not a word.

Q. Have you had any conversation with any officer of the Government, either at Washington or in New York, tending to secure the business of the disinfection of old rags to Mr. Bartlett, the Baltic stores or any person here in New York?

A. No, sir.

Q. When did you first exercise authority in designating a place for the disinfection of imported old rags in New York in 1885?

A. I think the 17th of June was my first indication of a place, and then under the coercion exercised by the custom-house.

Q. What information did you have on or after the 15th of June, 1885, of the control of the designation of places for disinfection of imported old rags in the port of New York by the United States Government, through the Treasury Department or the collector of the port; and I refer particularly to three letters that you have there?

A. Here are the letters (witness producing three papers).

(By the Court:)

Q. These letters you received from the collector of the custom-house at or about the date, enclosing letters from the Treasury Department?

A. Yes, sir.

(By defendants' counsel:)

Q. When did you receive them?

A. June 15th, 1885.

Q. Do you remember what day of the week the 15th of June was?

A. It was on a Saturday.

One of the letters produced by the witness is put in evidence by defendants' counsel, and is marked Defendants' Exhibit 36 of this date.

240 Q. Prior to this date, by whom had a place been designated for the disinfection of old rags in the port of New York?

A. By the custom-house authorities or the Treasury Department; I don't know which.

Q. Had you prior to the receipt of the letter been notified of the circular of June 10th, 1885?

A. No, sir.

Q. Was that the first notification you had of that circular?

A. It was.

Q. What assurance was that?

A. In addition to the permit the designation of the place for their disinfection.

Q. It says that he is directed to obtain an assurance in addition to the permit. Do you know what assurance it was that they were to give the collector in addition to the permit before he would permit the rags to be landed according to the terms of that letter?

A. I think I know that it was that I should designate the place.

Q. Let me read this language to you: "The Department has no objection to this (that is to the governing of the Battaglia by the circular of June 10th), with the understanding that you first submit all the facts to the health officer of the port and receive assurance from him that permit, if any issued in the case, is a permit duly authorizing the landing of the rags as required by the circular." What idea did this communicate to you at the time?

A. That is a very involved sentence. I so interpreted it.

Q. That the assurance was of the place. Is that it?

A. Yes, sir.

Q. When were you first notified that the designation of the Baltic stores had been revoked by the Treasury Department. Was it in this letter which you have now produced (handing paper to witness)?

A. Yes, sir; this was the first.

Defendants' counsel puts paper in evidence, and the same is marked Defendants' Exhibit 37 of this date, and read to the jury.

241 Q. Is that the letter enclosed (handing Defendants' Exhibit 23 to the witness)?

A. Yes, sir; that was the enclosure.

Defendants' counsel reads Exhibit 23.

Q. You had just prior to that time had a correspondence with the collector in which you had answered a letter of inquiry, hadn't you?

A. Yes, sir.

Q. Let me ask you if about the same time you had not another letter from the Secretary of the Treasury himself on this general subject—Mr. Manning?

A. I don't recall. I don't remember now. June 6th I had one from the Secretary.

Q. And was that in your hands at the same time?

A. Yes, sir.

Witness produces the letter.

Counsel reads the letter referred to, and the same is marked Defendants' Exhibit 38.

Q. What was that official action which was decided on the part of the department, or that the department proposed to take? What reference is that?

A. It was to aid the conference in carrying out its conclusions.

Q. Did you understand at that time that the Treasury Department had given up or was controlling the disinfection of old rags?

A. It was controlling most assuredly. These conclusions were forwarded to the Secretary of the Treasury.

Q. Do you remember when you received that?

A. No, sir; I do not.

Q. Your letter of June 6th, which is in evidence, was in reply to a letter—do you remember from whom?

A. From the collector.

Q. And did it enclose a letter from the Secretary?

A. No, sir; it enclosed a copy of a telegram.

Q. Was it this letter (Exhibit N)?

A. Yes, sir.

Q. That is the letter to which your letter of June 6th was an answer?

A. Yes, sir.

242 Q. I desire you to look at that letter, and tell me what part of it your reply was directed to?

Objected to on the ground that the letter speaks for itself. Objection sustained. Exception taken.

Q. Did you understand on the receipt of that letter that your action controlled the place of disinfection and the disinfection of old rags in the port of New York?

A. I did not.

Q. Did you understand that your advice or your directions and order was then required pursuant to that letter?

A. My advice.

By the Court:

Q. You read this letter and you saw by the telegrams from the Treasury Department that the collector was directed to submit the facts to you?

A. Yes, sir; I saw the telegram.

By defendants' counsel:

Q. Did you when you read that statement read the inquiry of the letter in the last paragraph?

A. I did, and I believed it was asking me for advice.

Q. Having read that letter, the first part of which your attention was called to by the court, and then this inquiry: "Will you be pleased to advise me whether in your judgment as health officer of the port, rags could with safety to the public health be allowed to be landed and without disinfection go into consumption," please state whether it was that inquiry that you answered in your communication?

Objected to. Objection sustained. Defendants excepts.

Q. Dr. Sternberg, whose opinion you took in this letter of June 6th; is he the Dr. Sternberg whose examination you had procured of the process of superheated steam?

A. Yes, sir.

243 Q. And when in this letter of June 6th, you say that it seems therefore advisable that for the present the rule for the disinfection of rags should be general, and that for reasons which have been set forth, the rags on the Vigilante and Wisenhorn should not be an exception to the rule, whose rule or which rule was there referred to?

A. The rule of the Treasury Department, the rule or circular of December 22. I understood that process No. 4 in that circular was the one that I had experimented upon at the Baltic stores. Prior to the receipt of the letters now put in evidence which were received by me on the 15th of June, there was not more than one place in New York where that process was available, and that place was at the Baltic stores. Subsequent to the 15th of June, there was a place in New York where such a process was available. It was at Robbin's reef. I remember to some extent the facts about the selection of Robbin's reef for the disinfection of rags.

Objected to.

Q. Had you had communicated to you by the collector of the port that letter from the Secretary of the Treasury of March 7, 1885, which is marked Defendants' Exhibit No. 7?

A. Yes, sir.

Defendants' counsel reads Defendants' Exhibit No. 7 to the jury.

Q. You state that you had received that letter?

A. Yes, sir.

Q. Where is Robbin's reef; within or without quarantine jurisdiction?

A. Within—about midway between Staten island and New York. That is the place where lighterage and disinfection has been done for many years.

Q. Now, state other facts in relation to the selection of Robbin's reef.

A. I received, subsequent to this, another letter from the Assistant Secretary of the Treasury.

244 Q. On that subject?

A. Yes, sir.

Q. What after that?

A. I gave my consent to any such arrangement.

Q. When?

A. If they chose to disinfect at Robbin's reef.

Q. What do you mean by that?

A. If the Treasury Department of the Government.

Q. How did you give your consent?

A. By letter.

Q. Have you a copy of the letter?

A. I don't think I have.

Q. Then it is a matter of recollection?

A. It is a matter of recollection.

Q. Going on from that time, what next were the facts, and what were the facts of the selection of Robbin's reef?

A. I heard nothing more about it for some time, until there was considerable objection by the health authorities of Brooklyn to their being disinfected at the Baltic stores. This difficulty was with the Brooklyn authorities; that was the reason why the permit to the Battaglia was granted in this form (Exhibit 13). Now, this is June 17th. I had not before that time mentioned Robbin's reef in any permit for rags, and I don't think I had at any time before that designated a particular place, so far as my recollection or knowledge goes, for the disinfection of old rags in New York.

Defendants' counsel reads to the jury Exhibit 13.

Witness continuing: Before the issue of that permit, I had received these letters of June 13th from the collector to which attention has been called, and the letter enclosing the circular of June 10th.

Q. Did you ever give any orders for the disinfection of old rags of the Vigilante or Battaglia, and if so, when and where?

A. I don't remember to have given any.

245 Q. Have you a memory of this permit of June 17, 1885?

A. I have.

Q. I ask you if you ever gave an order for the disinfection of the rags on the Battaglia or the Vigilante?

A. No, sir; I never did.

Q. Were you informed that Mr. Bartlett or any of the defendants had an interest in the barge Erie at Robbin's reef on June 17, 1885?

A. I was not.

Q. That was the barge on which this machinery for disinfection was?

A. Yes, sir.

Q. Was any conversation with either of the defendants, or with any one, had with you to influence your official action prior to the 17th of June, 1885, in respect to the disinfection of the rags on the Battaglia at Robbin's reef?

A. No, sir.

Q. What is the distinction between a cholera-infected port and a port not infected with cholera, in respect to dangers from imported old rags?

A. The difference is between an infection and a contagion.

Q. What is that difference; explain it, and state what you meant by a limitation in that paper of a cholera-infected port?

A. A contagion is that which is generated from the person and given from the person or the results of contact with the person. It is generated in the person, I may say. Infection is that which is generated outside of the person from conditions outside the human organism. It may grow and propagate in the slums of the streets, in the gutters, on the docks, and so may prevail in the atmosphere from these sources—be carried by the atmosphere from its nestling places into the docks and gutters. While a contagion is given from the human being and affects the clothing or whatever it may be.

Q. How about rags that are of old clothes?

A. Rags are not infected if baled—not infected from the atmosphere, I mean to say. They are not subject to those conditions when baled which infection imposes in the atmosphere coming from the ground, from the streets or from the docks. The
246 contagion is that which is given from the person and usually contaminates rags, fragmentary clothing or the clothing which is used by the sick, which when baled is effectually closed up, or canned up if you please, from the atmosphere, so that it is not disseminated; while the wrappings of that bale, subject as it is to the atmosphere of the locality, dragged perhaps along the docks which are infected by the infection which cholera produces or by yellow fever, would be objectionable perhaps and would be infected. That is the distinction. If a port is not infected with cholera that by no means gives safety in respect to rags which are shipped from that port.

Q. What other conditions are the rags subject to than those which might follow from a cholera-infected port?

A. By any contagion or from any contagious disease. The fragmentary clothing and clothing which may be in the bale of rags that has come in contact with a person suffering from a contagious disease, would be infected.

Q. And where would the particular danger come if the rags were allowed to be landed without disinfection and go into consumption?

A. From the interior of the bale if from a non-infected port by cholera or yellow fever.

Q. But if from a port where there was cholera or yellow fever, what then in addition would be necessary, if anything?

A. They might have both conditions of infection of the bale and of the rags themselves.

Q. Have you within your knowledge any facts relating to infection from cholera or analogous diseases by a ship which has not been loaded at the dock?

A. Yes, sir. I have known ships that have been loaded in proximity to an infected port to bring disease like yellow fever; as much as two lengths off.

Q. And suppose the communication with the shore should be by lighter. Are you relieved from the danger in that case if it be an infected port?

247 A. Not at all; by transit from the dock to the ship if it is a considerable distance, the danger would be merely relieved from infection by the atmosphere, which is at all times a disinfectant.

Q. But as to contagion—small-pox and scarlet fever, and other diseases, does it make any difference whether the port itself be infected or not?

A. Not if infected I say with yellow fever or cholera—as the wrappings of the bale would not come in contact with the sick or the clothing of the sick.

Q. It is in evidence that you had several interviews with the plaintiffs in this case, or some of them, and I will direct your attention to the testimony that they have given respecting several of these interviews. I will ask you, in the first instance, before you met Mr. McClintock, in respect to the permit of the Vigilante, had you received Mr. Scott Smith's affidavit about which there was some correspondence?

A. No, sir. I remember an affidavit, which is in evidence here of Mr. Scott Smith; and a request from Lockwood & McClintock to copy that and some correspondence. I never received more than the two letters from them, which are in evidence; the two letters are marked Defendants' Exhibits 3 and 4. It is in evidence that I made a mistake about the affidavit; I corrected it immediately, and I gave them permission to copy that affidavit.

Q. Now, they have produced the permit, and I will go back to the Vigilante. Please look at Plaintiffs' Exhibit A, and say to me how you came to allow the Vigilante's cargo to pass quarantine (handing plaintiffs' Exhibit A to witness)?

By the Court:

Q. Did you grant that permit individually?

A. No, sir.

Q. Did you have anything to do with the granting a permit to the Vigilante?

A. No, sir.

248 Witness, continuing (to defendants' counsel): The instructions were that ships from ports not infected by cholera or yellow fever, should be allowed clearance from quarantine if having rags, excepting rags, which was emphasized; they were directed to allow the vessel to proceed to the dock without delay and discharge its cargo other than rags. That was the general rule. That is what these words mean on this permit, "rags excepted," which words are underlined there. And as a fact, the rags on the Vigilante were never passed at quarantine; not as the usual permit is. The ship was passed to discharge cargo, except rags. That had been the custom at this port in respect to certain articles of cargo in order to expedite the merchants.

Q. I have found during recess, among the files of the custom-house, your letter of March 13, 1885, and I will ask if that is the one to which you refer as being in reply to the letter of the collector respecting disinfection on covered lighters. You said it was your recollection that you had written a letter (handing paper to witness)?

A. That is my letter, sir.

Defendants' counsel puts it in evidence, and the same is marked Defendants' Exhibit 39 of this date, and read to the jury.

Q. What was the difference between the ordinary consular certificates received prior to the sanitary conference at the Fifth Avenue hotel on April 23, 1885, and that which the conclusions in this letter would require (reading the letter)?

A. The difference is this. The Government has the supervision, the responsibility of seeing that the disinfection is properly done. There is a responsibility put upon the consul in his supervision, whether in the appointment of the inspector, or the certification which he makes, which no local health officer can secure.

249 Q. Do you know as a fact whether subsequent to that date the Government did have inspectors appointed abroad at ports.

By the Court:

Q. Do you know?

A. I know that I received from the Treasury Department a list of the inspectors appointed.

Q. That is all you know?

A. That is all I know.

By defendants' counsel:

Q. You were aware of the issue of the circular of July 17, 1885, were you not?

A. Yes, sir.

Counsel for defendant: May it please the court, my attention was drawn to this answer of Secretary Fairchild, in his deposition. He was the plaintiffs' witness; and it is from courtesy of that distinguished official that I ask your honor's permission, and the consent of counsel on the other side, to change that answer, because of this letter which I have received from him this morning, in which he states that since that deposition he has found this circular, and he, therefore, desires to have his answer in the deposition corrected.

Counsel for plaintiff: I don't think there is any objection to that.

Counsel for defendant: The circular is in evidence but the answer seems to contradict it, because in the deposition he says: "No circular of instructions was ever issued by the Treasury Department to consular officials touching upon the subject-matter of this inquiry." The question was whether a circular letter had been issued pursuant to the request of the Secretary of the Treasury to the Secretary of State. The circular is already in evidence as Defendants' Exhibit 6*a*.

The Court: Very well. Let the stenographer note that it is conceded that the letter refers to Defendants' Exhibit 6*a*, and that the correction may be made in the deposition of Mr. Fairchild, accordingly.

250 Q. Did you, prior to the arrival of either of the cargoes, have any conversation with either of the plaintiffs?

A. No, sir; not any.

Q. Did you, at some time have a conversation with Emery W. McClintock, in which these words were used, or these words in substance—I read from page 42: "Doctor Smith said there was no objection to those rags landing; but the collector should not make any trouble about them; that they had passed quarantine; that we had a permit from the city board of health, and they were entirely out of his jurisdiction;" also that he then asked you to endorse something to that effect on the papers, and you declined to do so; that he asked you to write a letter, and you declined to do that. Now, did such a conversation occur?

A. Not such a conversation.

Q. What conversation that at all related to it?

A. I told Mr. McClintock, if that be his name, I knew him indifferently well; I hardly knew him when I met him here, in court. But a man came to me in behalf of that cargo, and told him that the ship had been passed with the rags excepted, that it was in the hands of the Government. I declined to interfere under the solicitation to write some letter or do something. I said that the Government controlled it, and that my responsibility ended when the ship passed to the dock, with the exception on the rags. That is, with the statement that the rags were excepted.

Q. Did you tell him that the collector should not make any trouble about the Vigilante?

A. I recollect nothing of the kind, and I think I should recollect it if it had been so stated.

Q. Did you have an interview with McClintock and Lockwood at quarantine, where they introduced themselves as owners of the Exile, and informed you that they had been informed at the board of health that you had stopped the discharge of the rags and they asked you the reason, and did you say to them in words or in substance, that the rags were not shipped prior to the first of
251 January; then did they ask you what that had to do with it from a sanitary point of view, and did you ask them if they had seen your circular of August 9th?

A. Yes. I had a conversation with the parties representing the cargo of the Exile. I did not know them then, and I don't recollect their countenances, except as I have seen them since, two gentlemen, known as Mr. Lockwood and Mr. McClintock. I did not personally pass the Exile. I think this conversation was after the Fifth Avenue Hotel conference of April 23.

Q. Did this occur at the board of health with those gentlemen—I read from page 63—McClintock testified that they followed you to the board of health and that you went in and conferred with some gentlemen; that you afterward came out and waved your hand and went away; that the permit was handed to them?

A. Not at the board of health, sir.

Q. Did this occur—page 64; did you have a meeting with either of the plaintiffs at the board of health before this suit was begun, and did you then say to one of them that you would do anything you could for them, that you would like to relieve them; and did they then ask you to relieve them, and did you say that the only way you could help them was to order the rags to be disinfected at Bartlett's warehouse, and did you say it could be done by superheated steam, and that was the only thing. I think that was in reference to the Vigilante and the Battaglia?

A. I did not say that. I think you have confounded, perhaps, the Exile and the Battaglia, or some other ship.

Q. Permit me. I am reading now to you and making inquiries of you in respect to the testimony of Mr. McClintock, and I am asking if this conversation which he relates in his testimony at page 64 ever occurred in words or in substance?

A. No, sir.

Q. Did you ever state to them in relation to either the 252 Vigilante or the Battaglia that you wanted and would do all you could to relieve them?

A. I told them I would be glad to relieve them, if I could consistently. I never stated to them in words or in substance that the only way I could help them was to order the goods to be disinfected at Bartlett's storehouse. I never had an interview with either of the plaintiffs or with Mr. McClintock about the 17th or 18th of June – referring to page 66—in which I said in words or in substance that the rags on the Battaglia if accompanied with the same certificates as the Exile together with another form which I wanted that she should be passed. Referring now to page 67, I do not recollect having an interview with Mr. McClintock when he asked me why those rags on the Battaglia had been stopped—about this same date, the 17th or 18th of June, nor telling him that everything had to be disinfected, nor did he then reply to me, "but they have got the certificates that you require." Nor did I then answer, "Well, they have to be stopped," nor did I then jump up and tell him he had his remedy, nor did he say he knew it and would take it; my best recollection is that I did not say so.

Q. Did he ask you at that time, or any other time, where you had ordered the goods on the Battaglia to be taken, didn't you say that you hadn't ordered them to be taken to any place that you had not the authority?

A. I did not say it. I had already issued a pass for them; the pass of June 17th; I had but two letters from Mr. McClintock or Lockwood and McClintock on that subject. I never received a third letter.

Q. Did you state to Mr. McClintock at any time at the board of health, that before you had anything to do with this disinfecting company, they had sent a clerk to you two or three times, and finally told you it would be to your interest to look into the thing; that you told them that you were competent to take care of your own interest, and that afterwards one of the proprietors came 253 to you, and that you then went and looked into it; is that a fact?

A. That is substantially true. The words, that it would be for my interest to look into it, I do not say was mentioned. I think I repeated what he said, that I had better look into it. That is the best of my recollection. None of the proprietors of the disinfecting company, directly or indirectly, ever proposed to me, or offered any inducement or benefit to me from the disinfecting process, and as a fact I never had any interest in it. I think I had a conversation with Mr. Meyers in respect to the rags on the Vigilante or the Battaglia, but I did not state to Mr. Myers that there was no reason why the rags on the Vigilante should not be landed. I made an explanation about excepting rags on the permit. I said the ship had passed to the dock with the rags excepted; that there was a Treasury order for their disinfection, and that the goods were absolutely under the control of the Treasury Department, and I declined to interfere.

By the Court:

Q. When was that?

A. I think it was the last of April—that was in relation to the Exile.

By defendants' attorney:

Q. We are not referring to the same interview, evidently. Mr. Meyers testifies to an interview with you on the 3d or 4th of June. The Vigilante had not arrived until the 30th of May.

A. Ah, yes, sir. I am corrected. It was the Vigilante.

Q. I ask you whether on the 3rd or 4th of June you had a conversation with Mr. Meyers in respect to the rags on the Vigilante?

A. I do not remember the date, but I had a conversation with him.

Q. Did you then state that there was no reason why the rags on the Vigilante should not be landed?

A. I did not. What I said I have already stated; that the rags were excepted by the permit given by the health officer, and that the case was absolutely under the control of the Treasury order to be disinfected.

254 Q. What we have called here a quarantine pass—that yellow paper—you call that a permit?

A. I call it a certificate, just what it reads. It is a certificate for the benefit rather of the local health authorities who require some certification as to the condition of the rags.

Q. What has been the custom in this port for a number of years as to the lighterage and stevedoring and purification of cargoes in quarantine?

Objected to.

Q. As to the employment of lighters, the payment for services and for stevedores and for the process of purification, just state what the custom has been in this port about that.

Objected to; objection sustained; exception.

Q. The stevedores and lighters employed at quarantine, how are they paid, and to whom?

Same objection, ruling and exception.

Q. I will ask you now, particularly in June, 1885, how were the lighters and stevedores employed about the cargoes in quarantine paid?

Same objection, ruling and exception.

Q. In respect to your system of lighterage and stevedoring and treatment of the cargoes in quarantine have you received any communications from merchants of New York in 1884 and 1885 approving your administration?

Objected to; objection sustained; defendants' counsel excepts.

Q. About petitions about the danger of imported rags have you received original petitions from physicians in Brooklyn and New York?

Objected to.

The Court: When was that?
A. Some time in 1886.
255 The Court: I will sustain the objection.

Defendants' counsel excepts.

Q. Why did you pass the ship Vigilante up with the mark of the quarantine pass, "rags excepted"?

Objected to on the ground that it has been already answered.
Objection sustained.
Defendants' counsel excepts.

Q. Did you know at the time that the quarantine pass was given for the Vigilante with the words upon it, "rags excepted" that the Baltic stores had been designated for a place of disinfection, and that the rags could not be landed except at the Baltic stores and through the process of disinfection?
A. I did.

By the Court:

Q. At the time you wrote this letter to the collector in which you stated that these rags could not be landed with safety to the public health you were aware of the fact that the collector at that time ordered that these Baltic stores should be designated as a place of disinfection?
A. Yes, sir.
Q. And you were aware at that time that they were to go to the Baltic stores?
A. I knew of no other place that they could go.

Cross-examination by plaintiffs' counsel:

Q. As matter of fact didn't you know that that place was designated by the Government?
A. I did.
Q. What was the first intimation you had from Washington of the effort made by Messrs. Lockwood and McClintock to get their rags passed through the custom-house?
A. I don't recollect of anything until I was apprised by the letter of the collector. I am quite sure of that. I know Mr. Dutcher. I don't think I had seen him about that time. I have no recollection of it.

256 Q. Didn't he go down and see you, and didn't you ride together from Staten island, on the Staten Island boat, some time about the 5th or 7th of June?

A. I don't remember.

Q. I mean, didn't you ride together on the boat to the quarantine landing?

A. He may have done so. I don't remember that he was there.

Q. How intimate are you with Mr. Dutcher?

A. I know him very well. I have known him for quite a while, for several years, since I have been health officer. I have seen him, on an average, perhaps once in six months, sometimes; and other times once a week. Going back to the period when the Battaglia and Vigilante were lying in the harbor, his visits were not as frequent as once a week at that time. I knew Mr. Bartlett very well. That was also an acquaintance which I formed since I assumed the duties of health officer of the port. I knew Mr. Dutcher before I came here. I met him when he was commissioner of public works at Albany. He was appointed by Gov. Cornell. I was appointed during the first year of Gov. Cornell's term also. I think he was appointed some time previously. Within, perhaps, a few months. March 24, 1880, I was appointed, and Mr. Dutcher was appointed, I think, early in January. I made Mr. Dutcher's acquaintance in Albany, I think, and it was while he was commissioner of public works up there.

Q. Mr. Dutcher, I presume, is a valued friend of yours?

A. I esteem him such.

Q. Can you tell us whether he gladdened your residence at Staten island by a visit during the early part of June, 1885?

A. I have no distinct recollection of his being there, and yet he may have been.

Q. Did he ever speak to you about rags, in June?

A. No, sir.

Q. You are clear about that?

A. I am.

Q. Never had any conversation with you about rags?

A. I don't remember that he did.

257 Q. You said a moment ago that you were positive he had not. Do you desire now to be understood as saying that your memory is clear on that subject?

A. I do.

Q. You never had any conversation with Mr. Dutcher about these particular rags?

A. No, sir.

Q. You knew Mr. Bartlett pretty well, too?

A. Yes.

Q. Did you know that Bartlett and Dutcher went to Washington in relation to these rags?

A. I did not.

Q. Would you be surprised to learn that Mr. Dutcher made a visit to Staten island on the day after his return from Washington on the same boat with you?

A. No, sir.

Q. And Mr. Dutcher was sufficiently intimate with you to talk with you about rags if he wanted to, wasn't he?

Counsel for defendants objects. Overruled. Exception.

A. He was, in a legitimate and fair way.

Q. Of course, that goes without saying. When did you first hear about the Vigilante?

A. I don't recollect whether the parties had come to me before I was notified by the collector. My first official act was in reply to the collector's letter. I am sure of that. I had not received an affidavit before that?

Q. Where did you get W. Scott Smith's affidavit from?

A. I think he sent it to me.

Q. By whom?

A. I can't tell whether by mail or otherwise.

Q. Did you know who he was?

A. I met him at the board of health, where this discussion arose.

Q. Have you got the letter in which it was enclosed?

A. No, sir.

Q. And you can't tell whether it came to you by messenger or was brought to you by a carrier pigeon, or was delivered through the mail?

258 A. I don't remember the gentleman, except at the board of health.

Q. What gentleman?

A. Scott Smith. It was my first acquaintance with him, I think.

Q. You had never seen him before?

—. I can't say positively.

Q. Was he a young man?

A. I don't know how young he is. He is thirty-five or upwards, I should think.

Q. Did he look like that mysterious young man that told you that you ought to go and see that experiment made?

A. No, sir.

Q. What became of that young man?

A. I don't know.

Q. I understood you to testify that he was a young man—the person who came to you as you got off the boat from Staten island—and who asked you to go up and see that experiment?

A. I did not so testify.

Q. Pardon me. I understood you to testify that a gentleman, S. Weber Parker, first came and asked you to go and see the experiment?

A. No; not first.

Q. Well, who did come first?

A. This young man. I did not ask him his name nor where he came from. I saw him at the board of health. I was standing in the secretary's room, at the board of health, which is in the same building with the police headquarters, 301 Mulberry street. I never had seen this young man before.

Q. State the conversation that ocurred.

A. I stated it.

Q. Kindly state it again.

A. I had seen the young man once before in the street. He had asked me if I would——

Q. Let me interrupt you. You say you had seen him once before, and you identified him when you saw him there at the board of health that day?

A. Yes.

259 Q. You recollected him then well enough to identify him?

A. I remembered him.

Q. Don't you recollect now him well enough to describe him?

A. No better than I have.

Q. You haven't given us a description of him yet, except that he looked like a young man, and that is not sufficiently complete from a witness who was able to identify him when he saw him a second time.

A. I couldn't identity him now if I should see him.

Q. How long was it before that second time that you had seen him first?

A. A few days. I can't remember where, but I think in the street.

Q. Do you mean to say that out of the many thousand people you pass in the street this young man passed you and you took such notice of him that when you afterwards met him you recognized him?

A. I say he came to me and inquired if I was Dr. Smith.

Q. But he was not a stranger to you?

A. I did not know him the first time I saw him.

Q. Do I understand you to say that at the first time he came and asked you if you were Dr. Smith?

A. Yes, sir.

Q. Then that was not your first interview?

A. No, sir.

Q. Then we will go back to the first interview, because that is what I want to get at. Now, you say this young man came to you and asked if you were Dr. Smith?

A. Yes, sir.

Q. Where were you at that time?

A. I told you that I couldn't recollect.

Q. Can you tell whether you were in the house or out in the open air?

A. I think in the open air.

Q. Down at Staten island?

A. No, sir.

Q. In the city here?

A. Yes, sir.

Q. And in the open air?

A. Yes, sir.

Q. Can you tell us in what part of this island it was?

A. I think in Broadway.

260 Q. Was it in the neighborhood of 71 Broadway?

A. No, sir.

Q. Was it in the neighborhood of Wall street?

A. Between 71 Broadway and the ferry.

Q. Between 71 Broadway and the South ferry, I presume?

A. My recollection is not distinct as to where I was at the time.

Q. State what he said to you.

A. He said to me that the party that he represented wished I would look into a disinfecting patent.

Q. Did he state to you who that party was?

A. I think he told me of some company.

Q. Let us go back to that conversation. You say he met you in the street and asked you if you were Dr. Smith?

A. Yes, sir.

Q. Let me request you to fix the date of that.

A. I could not do it.

Q. Did it occur in 1805?

A. Since that.

Q. Well, did it occur since you became health officer of the port?

A. Yes, sir.

Q. Did it occur in 1884?

A. Yes, sir.

Q. Did it occur in the latter part of 1884?

A. It did.

Q. Was it in the month of November, 1884?

A. I couldn't tell you.

Q. Was it in September, 1884?

A. I couldn't tell you that either.

Q. Was it later or earlier than September?

A. It was somewhere in the fall or early in the winter. I am not quite certain.

Q. It was late in the fall then. Is that it?

A. Yes, or the early part of December.

Q. Then, according to your best recollection, you fix it at about November or December, 1884?

A. Yes, sir.

Q. And this young man came to see you—or, rather, you say he met you in the street?

A. Yes.

Q. Did you ask him what his name was?

A. No.

261 Q. And immediately after his asking you if you were Dr. Smith what did he say next?

A. I don't know. I don't think he made any other remark.

Q. Do you mean to say that this young man came up to you in the street and asked you if you were Dr. Smith, and then immediately walked away?

A. No, I do not.

Q. You say he didn't make any further remark?

A. I have just told what he said.

Q. After he asked if you were Dr. Smith, what did he say next?

A. He said he wished me—or the parties that he represented, wished me to look into a disinfecting arrangement for rags; a disinfecting process.

Q. Did you ask him who the parties were?

A. I did not. He told me he represented some disinfecting company. I can't recollect the name, unless it was Blackman.

Q. You think it was such a name as Blackman.

A. It seemed so.

Q. Did you ever become acquainted with Mr. Blackman?

A. Afterwards, I think. Yes, I saw him afterwards.

Q. This young man told you that he came from a man named Blackman?

A. I don't say that he said he came from a man named Blackman. He said that he represented the company.

Q. Didn't he mention the name?

A. That was the name of the company, I think.

Q. As you recollect it now, Blackman was the name of the company?

A. No, not the name of the company; it was the name of the invention.

Q. Will you say what you mean in stating that the young man mentioned the name of Blackman?

A. It was a company got up for the purpose of disinfecting, and such things—disinfecting privies, and I think it was called the Blackman Disinfecting Company. That was the name as near as I can remember.

Q. And you say you subsequently met a Mr. Blackman?

A. Yes.

262 Q. How long did this interview last?

A. Perhaps a minute or two; not more.

Q. What did you say in reply to his request?

A. I didn't give him any encouragement.

Q. I didn't ask you what encouragement you gave him. I asked you what you said?

A. I don't remember giving him any encouragement.

Q. Did you say that you would or would not go and see the thing?

A. I did not say.

Q. Didn't you answer the young man?

A. I didn't say that I would or would not go.

Q. Didn't you give him any answer?

A. I treated him civilly of course.

Q. But the trouble is, I want to know what you answered him—what you said?

A. I can't give you the words.

Q. Can you give me substantially what you said?

A. I did not say that I would go, and did not say that I would not.

Q. Did you say that you would not go?

A. I did not. I listened to him. I didn't say that I would or would not.

Q. Well, how did your interview with him end?

A. By his going away.

Q. Didn't he follow you along to see what you would say?

A. No, sir.

Q. Did you tell him you wouldn't say anything?

A. No, sir.

Q. Now, do I understand that this young man, meeting you in the street, represented to you that he represented the Blackman Company, and having asked you to go and see their process in operation, you and he walked along together, and you gave him no answer as to whether you would go or not?

A. He didn't ask me.

Q. Didn't he ask you to go and see it work?

A. To examine a process for disinfecting.

Q. When this young man asked you to examine this process of disinfection, did you walk along the street with him without giving him any answer?

A. I did not say I would or would not.

263 Q. Did you say anything to him?

A. I treated him civilly.

Q. Can't you give me what words he said? Did you say good day?

A. I presume I did.

Q. Did you have any reason to apprehend that he was one of those young men that wanted to know whether you came from Troy or some place like that?

A. No, sir; I did have the impression that he represented some sham disinfecting company?

Q. Having that idea, you made him no answer?

A. I didn't.

Q. Did you tell him that you had that idea?

A. No, sir.

Q. And you didn't tell him you wouldn't go?

A. No, sir.

Q. And so you parted?

A. We did.

Q. You without saying anything to him, and he having said that he would like you to see the process?

A. Yes, sir.

Q. A few days after that you went to the health department?

—. I did.

Q. That is in Mott street?

A. Yes, sir.

Q. And you met this same young gentleman there, and what did he say?

A. He said very much the same thing, that it would be better if I would look into it.

Q. He thought it would be better for you to look into it?

A. Better for me to look into it.

Q. He didn't state that the first time you saw him?

A. No.

Q. Then it was not exactly the same thing that he said?

A. Yes.

Q. I understood you in your direct examination to say that the young man came to you before, and told you that those who sent him said it would be for your interest to look into it, and that you replied: "I can look out for my own interest." Isn't that what you said this morning?

A. Yes, sir; that I should take care of my own interest.

264 Q. You told this young man that you could look out for your own interest?

A. Yes.

Q. And you told him to go back and tell those who sent him so?

A. Yes.

Q. Why did you say that?

A. Because I thought he was blackmailing me, perhaps. I thought he was endeavoring to induce me to do something so that he could blackmail me.

Q. How did you get the impression that he merely wanted you to go and see an invention—that he wanted to blackmail you?

A. Well, I took it as a threat.

Q. A threat of what character?

A. A threat that I had better look after it.

Q. A threat that he would damage you physically or morally?

A. I don't know.

Q. You had formed an idea about it because you reached the conclusion that he was going to blackmail you, didn't you?

A. Yes, I say so.

Q. How did you reach the conclusion that you could be blackmailed by going to see a disinfecting machine in operation?

A. Because I interpreted his words as a threat.

Q. What words?

A. What he said.

Q. That you had better go and see the process in operation?

A. Yes, better go and look into it.

Q. Was his manner threatening?

A. No, sir.

Q. Perfectly polite?

A. Yes.

Q. Did you call for the police? You were at police headquarters, and within reach of the entire force. Did you call for the police to put the young man out?

A. I did not.

Q. Yet you thought he was going to blackmail you, and he was standing in front of you. What did you do to him by way of self-defense?

A. Nothing, but attended to my own business.

Q. Your own business was to protect yourself from blackmail, wasn't it?

A. I was there to attend a meeting of the board.

265 Q. Didn't you consider it your own business to defend yourself from blackmail?

A. I didn't think there was any occasion for that.

Q. Haven't you said that you apprehended that he was engaged in an attempt to blackmail you?

A. I didn't think there was anything serious in it.

Q. Do you mean to say that you didn't think an attempt to blackmail you was a serious thing?

A. I thought it was a threat.

Q. Didn't you say that this young man was trying to blackmail you—that you thought so at the time?

A. I thought he was trying to extort something from me or to blackmail me.

Q. Didn't you regard that as something serious?

A. Not serious enough to take any strong measures.

Q. What did you say to him?

A. I have repeated what I said.

Q. You haven't told us a word. Did you tell him to go away?

A. I did not.

Q. Did you take a good look at him?

A. Yes.

Q. You told him to go away?

A. No.

Q. Well, what did you say to him outside of telling him that you could look out for your own interest?

A. I didn't say anything.

Q. Then, I understand you to say that this young man, talking to you—attempting to blackmail you, as you thought—you told him you could look out for your own interest, and that was the end of the conversation?

A. Yes.

Q. And that is the description of the conversation, and the only description you are able to give to it?

A. Yes.

Q. What became of the young man after that wonderful sarcasm?

A. I don't know.

Q. What became of you?

A. I told you I attended a meeting of the board.

Q. What did you do after that?

A. I went home.

Q. Did you tell your friend Dutcher about this cool threat?

A. I didn't see him.

266 Q. When after that did you see Mr. Dutcher?

A. I don't know.

Q. When after that did you see the young man?

A. Never again.

Q. Didn't you see him at the experiment in Centre street?

A. I think not.

Q. Didn't you say this morning that you saw him in Centre street?

A. I did not.

Q. Are you quite sure about that?

A. I am.

Q. If you did say so, then it was a mistake?

A. No, it is not a mistake, because I did not say so.

Q. When did you next hear about this disinfecting arrangement?

A. Some time afterwards, when I was coming off the ferry. I saw a man whom I subsequently learned was Weber Parker. He came to me and politely requested me to attend the process of disinfecting rags in the bale.

Q. Did you know Mr. Parker before?

A. No, sir.

Q. Why did you come on Mr. Weber Parker's invitation and still decline the anonymous young man's equally polite invitation?

A. Because he described to me something of the apparatus, and I believed there was something in it that would be interesting to witness.

Q. Then you attribute to Mr. Parker's powers of description your readiness to go and see the machine in operation?

A. Possibly.

Q. And your refusal to go on the polite young man's invitation?

A. Possible his power of description had something to do with it.

Q. Why did Mr. Parker come to see you?

A. I can't tell you.

Q. When was it?

A. I don't know.

Q. Was it in November or December?

A. It was about a week before the experiment in Centre street.

Q. When was that?

A. My impression is it was in November, but I am not certain.

Q. And so you decide the question?

A. Yes, sir.

267 Q. Now, how long was this after this wicked young man had threatened you with blackmail?

A. I can only guess at it. It was some time within two weeks, I think.

Q. About two weeks after you had been approached by this young man you were met by another total stranger. Now, where was this?

A. When I was coming off the ferry-boat.

Q. Did he come from behind the post, or did he present a letter of introduction to you?

A. He made himself known as Mr. Parker, and asked if I was Dr. Smith.

Q. What did you say?

A. I said I was.

Q. And then what did Mr. Parker say?

A. He politely requested me to attend an experiment for the disinfection of rags in the bale in Centre street.

Q. Did he explain it to you as the Blackman process?

A. No.

Q. Did you understand this as being the same thing that the other young man referred to?

A. I think he told me that the young man had been requested to call on me and ask me to come and see it.

Q. Did you tell him that the young man had threatened you?

A. No.

Q. The young man told you it would be better for you to go and see this thing?

A. Yes.

Q. What threat of blackmail was contained in that remark?

A. I interpreted it that way.

Q. Wasn't it a promise of good to result to you?

A. No, I didn't consider it that way.

Q. Your own thought prompted you to be afraid and to view that remark as an attempt at blackmail?

A. Yes, sir.

Q. Why did you interpret the remark of this young man then, as a threat to blackmail you?

A. Because I could see no reason why he should say that unless it was for that purpose.

268 Q. How could you interpret a statement that it would be better for you to do a certain thing into a threat that it would be worse for you?

A. I could see no other explanation of it.

Q. Didn't you possibly conceive that it might be a promise to give you a good return?

A. I did not.

Q. For any effort you might display in watching the operation of this prosess?

A. I didn't think of it in that way.

Q. Now, you say Mr. Parker came to see you and told you that this young man had been sent by him?

A. Yes; I think so.

Q. Did you still think that he attempted blackmail then?

A. I did not after my conversation with Mr. Parker.

Q. Then it was Mr. Parker's description of the process that changed your impression as to the meaning of what this young man had said to you?

A. That led me to think that there was something worth looking after in it. I thought there was something of interest in the process for a person engaged in looking after health matters and the disinfection of ships. He descibed the process by which he introduced sulphurous acid gas in disinfecting as well as steam, and as it was one of the agents that I was using, I thought it of sufficient interest to say that I would attend the experiment.

Q. You were using sulphuric acid gas at this time?

A. I was.

Q. For what?

A. For disinfecting ships by the combustion of sulphur.

Q. Burning it in the rough, so to speak?

A. Yes.

Q. Putting it upon a dish and burning it in the hold of a vessel?

A. Yes, sir.

Q. Did Mr. Parker's description of this machine give you an idea that you could use it for disinfecting ships?

A. It did, in so far as this, that it was under control by which it was introduced under pressure, and large quantities could be introduced in a space by a certain condensation.

269 Q. Do I understand you to say that when you first investigated this machine, you were under the impression that it would be useful to you for disinfecting the holds of vessels?

A. Not the machine, but the method of using the gas for that purpose.

Q. After Mr. Parker got through his description, what kind of an invention was it that you understood you were going to inspect?

A. I didn't know. I only knew that he said he could introduce this gas or steam into a bale of rags and disinfect them.

Q. I understood you to say a moment ago that you were deeply interested in the disinfecting of ships?

A. Yes.

Q. You don't call a bale of rags a ship?

A. I say that the control which he exercised in introducing it into a bale of rags would enable me to condense it, and use it for disinfecting ships.

Q. Did he explain to you that you could so use it?

A. No, sir.

Q. What did he describe to you?

A. That is what he described, that he had a machine by which he could introduce either sulphurous acid gas or steam into a bale of rags.

Q. That your conversation was about rags, and the disinfection of them?

A. Yes.

Q. And not about the disinfection of ships?

A. I have not said it was.

By the foreman of the jury:

Q. When was that?

A. That was at the interview with Mr. Parker as I came off the ferry-boat.

Q. About what month was it?

A. I think it was in November.

By plaintiffs' counsel:

Q. You have placed your first interview with the mysterious young man the latter end of December, or the beginning of November?

A. I told you it was some time in the fall.

270 Q. In the conversation with this young man, the first conversation you had with him, if that occurred the latter part of November or the beginning of December, then the interview with Mr. Parker must have occurred towards the end of December?

A. I could not say when it was. I tell you it was some time in the fall or perhaps the early part of December.

Q. After your conversation with Mr. Parker you changed your opinion about this young man?

A. I didn't think that was his purpose.

Q. Did you ask Mr. Parker what his purpose was in saying that it would be better for you to look into the matter?

A. I didn't say anything to him about it.

Q. You had a remark made to you by this young man that it would be better for you to go and inspect this machine?

A. Yes.

Q. And another person who was interested in the machine came and spoke to you about it, and having said that he sent that young man to you, you did not ask him what the young man meant by saying it would be better for you to go and look into it?

A. No, sir; it explained itself when he showed me he was honest and sincere in his effort to discover the merits of the process.

Q. How did he show you that?

A. By telling me what he could do.

Q. Didn't you say that the explanation of Parker caused you to change the interpretation that you put upon those words of the mysterious young man?

A. It did.

Q. In what way did it change you?

A. By showing me that he was sincere in believing that he had a process which could effect this object.

Q. How did that explain that it would be better for you to go and see the machine?

A. Because he thought he had the means of introducing this gas or steam for various disinfecting purposes.

Q. And that is the only explanation you have to give?

A. Yes, sir.

271 Q. That is the only explanation, to-, that you asked him for?

A. Yes, sir.

Q. Whom did you find there in Centre street?

A. Fifteen or twenty gentlemen.

Q. Was Mr. Bartlett there?

A. No, sir.

Q. Was Collector Robertson there?

A. No, sir.

Q. Who was there?

A. Dr. Edson, Dr. John B. Hamilton——

Q. Are you referring to your memorandum when you mentioned that last name?

A. No, sir.

Q. Have you any memorandum of these names?

A. No, sir.

Q. Are you testifying entirely from memory?

A. I am.

Q. Do you know who brought those people there to see that machine in operation?

A. No.

Q. You and Dr. Hamilton made the test?

A. We didn't make the test.

Q. Was any test made there?

A. Yes, sir.

Q. And a temperature of 190 degrees was developed?

A. 196, I believe.

Q. You and Dr. Hamilton made an examination of what that meant?

A. Yes, sir.

Q. And you exchanged views about it?

A. Yes.

Q. And then you suggested putting in three screws instead of one?

A. Not at that time.

Q. Didn't you say this morning that you suggested to Dr. Hamilton that the machine could not generate sufficient heat with one hollow tube thrust into the bale, but that by multiplying the number of tubes a greater degree of heat could be obtained?

A. Yes.

Q. Then you did make that suggestion to Dr. Hamilton?

A. I did.

Q. When?

A. Just there.

Q. Right at that time?

A. Yes.

Q. Did you make that suggestion to Mr. Parker?

A. I did not.

272 Q. At that time the machine was in all respects the same as it was over at Mr. Bartlett's warehouse, except that there was one tube instead of three?

A. I presume that is so. I saw nothing of the machinery.

Q. You inspected nothing but the box and the effects in the box?

A. That is all.

Q. What became of you after that proceeding?

A. I went home.

Q. Did you have any conversation with Dr. Hamilton about it afterwards?

A. I received a letter from him requesting to know my opinion about it.

Q. Where is that lettter?

A. I haven't it here. I think I have it at home.

Q. When did you get it?

A. Some time subsequent to that.

Q. A month subsequently?

A. Possibly a month.

Q. Six weeks?

A. I can't tell you.

Q. Did you answer Dr. Hamilton's letter?

A. I did.

Q. What was the subject-matter of your answer?

A. It was what I have told you. I suggested to him that I thought the multiplication of the screws would increase the heat.

Q. Dr. Hamilton wrote that to you?

A. No, sir; I wrote that to him, replying to his letter.

Q. What was his letter?

A. Asking me for my conclusion.

Q. Didn't you state that you gave him your conclusions right there on the spot?

A. I did.

Q. Then he asked you to give him those conclusions on paper also. Is that it?

A. He did.

Q. So that your letter to him, written about a month afterwards, was substantially a repetition of what you told him by word of mouth at the time of the experiment?

A. Yes, sir.

Q. When did you next hear of this machine?

A. I can't tell you when I next heard of it. I heard of it as the machine that was contemplated to disinfect at the Baltic stores after I received a letter from the Secretary.

273 Q. Up to that time you never heard of this machine?

A. I did not hear of it again.

Q. And when you were asked to designate a place for the disinfection you had no knowledge of the machine at all?

A. No, sir.

Q. No further than what you saw at Center street?

A. No, sir.

Q. And you hadn't any idea that Mr. Bartlett was interested in it?

A. No, sir.

Q. You hadn't any idea that Mr. Bartlett was interested in any way in having the disinfecting done at his store?

A. No more than I understood he was anxious for any storage purpose that might come to him, as all such merchants are; that was the only impression I had.

Q. You had that impression?

A. I had an impression.

Q. How did you get it?

A. Simply from the fact that he was in the storage business.

Q. Did you say you were invited by the Treasury Department to designate a place?

A. I think it was to examine.

Q. Did you use the word designate this morning?

A. I don't know that I did, sir.

Counsel for defendants: I object to the word designate, for that was in reference to Robin's reef, and to a time subsequent to the 1st of June.

Objection overruled; defendants' counsel excepts.

Q. Tell me what the Treasury Department did ask you to do in reference to disinfection, the first time they ever asked you to do anything?

A. My impression is—which I think the letter of the Secretary will confirm—that I was requested to examine any place suitable for such purposes in New York or Brooklyn.

Q. How were you requested?

A. In writing.

274 Q. Were you, by that same written communication, requested to name to the Secretary a place where that disinfection should take place?

A. No, sir.

Q. When you started out in this examination, was that the one in which you invited the co-operation of Dr. Raymond?

A. It was.

Q. Had you at this time heard anything from Mr. Bartlett as to his interest in this machine?

A. No, sir.

Q. Had you heard anything from Mr. Bartlett as to wanting his store designated as the place in which the disinfection should be done?

A. No, sir.

Q. Will you swear to that?

A. I will.

Q. When did you first hear of Mr. Bartlett's anxiety to get this place designated or named as the place of disinfection?

A. I couldn't say.

Q. Was it before the test was made over there?

A. No, sir.

Q. Did you hear that Mr. Bartlett wanted his store named before the test was made in the Baltic stores?

A. No, sir.

Q. Do I understand you to say that at the time the test was made in the Baltic stores you had never heard that Bartlett & Company wanted their warehouse designated as the place in which the disinfection should occur?

A. They had never expressed a desire that it should be.

Q. Do you swear to that?

A. I do.

Q. Will you swear that you never heard of their expressing such a desire prior to that test?

A. I think Mr. Bartlett had subsequent to that.

Q. Prior to that experiment in the Baltic stores, I say, had you ever heard that Mr. Bartlett wanted the Secretary of the Treasury to designate the Baltic stores as the place in which the disinfection should occur?

A. No, sir.

Q. You swear to that?

A. I do.

Q. This test was made in the Baltic stores in January?

A. Yes.

275 Q. Did you, on December 18th, receive from the Secretary of the Treasury a letter in which the following words occur: "The department is in receipt of a letter from E. B. Bartlett & Company dated the 15th instant, in which reference is made to the proposed circular of this department touching the disinfection of rags after landing in the U. S., and asking that their warehouse may be selected as a proper place for such disinfection." Did you get that letter at or about the date it bears?

A. I think I did.

Q. Didn't you know from that letter that the Bartletts had made application to the Treasury Department to have their stores designated as the place?

A. I didn't recollect that letter.

Q. (Repeated.)

A. I did not.

Q. Will you now say that you didn't know that Bartlett & Co. were trying to have those stores named as the place of disinfection when you attended that experiment?

A. I think I remember that letter now.

Q. Do I understand you now to say that when you attended that experiment in January you knew they were trying to get their stores named as the place of disinfection?

A. I knew of it through that letter.

Q. You knew the Bartletts well?

A. Yes.

Q. Did you attach faith to that letter when you got it, or did you have any doubt about the accuracy of what the Secretary of the Treasury said?

A. I knew, of course, that the Secretary wished me to do what he asked.

Q. He informed you that Bartlett & Co. have asked to have their place designated?

A. Yes.

Q. Did you believe that statement?

A. I did.

Q. And you then knew, on receipt of that letter, that Bartlett & Co. had made such application?

A. Yes.

Q. Then when you attended that experiment you knew that Bartlett & Co. were seeking to have their store designated as the
276 place of disinfection?

A. I knew it so far as that letter informs me of it.

Q. Didn't you believe it?

A. I believed it so far as the letter gave me the information.

Q. Did you need any further evidence in order to strengthen your belief?

A. No, sir.

Q. You had no doubt that Bartlett & Co. wanted the Baltic stores named as the place of disinfection?

A. I believed it, of course.

Q. Then you believe, when you went and attended that experiment that Bartlett & Co. were seeking to have their store named as the place where disinfection should occur?

A. I presume so.

Q. When did you go on that tour to examine a place?

A. The latter part of December, I think.

Q. You were then acting under written instructions from the Secretary of the Treasury?

A. Under a request, or instructions.

Q. Under the written request of the Secretary of the Treasury?

A. Yes.

Q. Did you then know that Bartlett & Co. were trying to have the Baltic stores named as the place?

A. If I was in receipt of that letter; certainly I did.

Q. Without any hypothesis as to whether you had received the letter or not, I want to know as a matter of fact whether, when you took Dr. Raymond with you to examine warehouses, you knew that Bartlett & Co. wanted their store named?

A. I did, if I was in receipt of that letter. My impression was that I had received a letter previous to that.

Q. Will you now state whether or not you knew that your friend, Mr. Bartlett, wanted the Baltic selected as the place?

A. I say I did, so far as that letter goes.

Q. Does not this letter state that?

A. It did.

Q. So that this is the letter under which you went to make the examination?

A. That was the letter.

277 Q. Was it under this letter that you made that examination?

A. I think so; and yet I don't know but there are other letters; but I think this is the letter.

Q. Do you remember stating on direct examination that you had been requested by the Secretary of the Treasury to examine generally the warehouses in Brooklyn in order to find a place where the disinfection could be carried on, and that you took Dr. Raymond with you, and told him you would select no place except one that had great sanitary advantages, and that you went through all the warehouses, and finally stopped at the Baltic stores, because that was entirely surrounded by water?

Objected to; objection overruled; defendants' counsel excepts.

A. No, sir.

Q. What did you state about that?

A. I said I examined warehouses in Brooklyn, down towards the Erie basin, in connection with Dr. Raymond.

Q. Did you state any conversation that you had with Dr. Raymond about it?

A. I think I did; but we concluded that that would be a very proper place.

Q. Did you say that you investigated all the warehouses around there?

A. I did not.

Q. What warehouses did you examine except the Bartlett's?

A. I don't remember.

Q. Did you examine any?

A. Yes, sir.

Q. Where?

A. I can't tell you now.

Q. Will you swear that you examined any?

A. We did. I don't know whether we examined any other than Bartlett's Company, but we examined other stores.

Q. That is, you went to other of Bartlett & Company's stores?

A. I don't know. I never knew what stores he had.

Q. But you were a pretty close friend of Mr. Bartlett's?

A. Not so very close.

278 Q. You heard his description of your intimacy and friendship?

A. I have regarded him as a friend.

Q. Did your hear his description of your relations on Friday?

A. I did.

Q. Was that accurate?

A. Yes; very nearly so.

Q. Do you desire to qualify the strength of your friendship?

A. I mean to say that we have not been intimate, but we have been friendly.

Q. How did you come to go to that experiment on the 9th of January?

A. I went there by arrangement with Dr. Raymond.

Q. Where was that arrangement made?

A. I think at the same time when this was selected.

Q. At the same — that you and Dr. Raymond selected Bartlett & Company's stores as the place of disinfection you also arranged for the test? Is that so?

A. We arranged——

Q. Answer, yes or no.

A. I can't answer it, yes or no.

Q. You can give me a direct answer.

A. No, sir; because he did not know that we could get anybody to make the test.

Q. Who asked you to test this machine after the experiment on Centre street?

A. No one.

Q. How did you come to have the machine in your head when you and Dr. Raymond went looking for a warehouse?

A. Because of the request of the Secretary of the Treasury.

Q. Do I understand you to say that the Secretary of the Treasury requested you to have an experiment made with this machine?

A. No, sir; but to examine for the purpose of disinfection.

Q. The machine?

A. Yes.

Q. Do you say that the Secretary of the Treasury directed you to examine this machine?

A. No; to examine a place for the disinfection.

Q. I ask you how you came to be in Bartlett & Company's stores at the experiment that was made with that machine.

A. I am trying to tell you.

279 Q. Please do so.

A. Dr. Raymond and I agreed that if a test could be made to prove its efficiency by submitting to it these germs of disease, with the assistance of some competent person, that he would encourage it; and for that purpose we suggested that Dr. Billings be the party selected to make the test.

Q. Did you and Dr. Raymond both make that suggestion?

A. We made it together.

Q. Who spoke of it first?

A. I can't tell you.

Q. Do you mean to say that you can't tell whether you invited Dr. Raymond to test this machine, or whether he invited you?

A. We made an arrangement together.

Q. How did Dr. Raymond know about the machine?

A. I don't know.

Q. Did you ask him?

A. I don't know how he knew. I presume he knew about it.

Q. Why?

A. Because we were talking about making the experiment.

Q. Who was talking?

A. He and myself.

Q. Who suggested the experiment?

A. I don't know which one.

Q. Do you mean to say that you two gentlemen with your two hearts beating in unison, started to speak about it together?

A. I can't say. I think I suggested that disease germs be used instead of taking anything for granted from the examination by heat.

Q. Didn't you say that after the experiment the thing passed out of your mind entirely until it was revived by a letter from Dr. Hamilton?

A. I think so.

Q. And you said that was the only communication you had with anybody about it?

A. Yes, sir.

Q. How does the matter come up between you and Dr. Raymond?

A. I have told you.

Q. You have told me it was up, but you have not told me which brought it up.

A. I have told you that I talked with him as to the selection of a place on that water front.

280 Q. You have confined yourself to the machine and I to a place. That is another thing altogether. As I understand it, you went to investigate the facilities of the warehouses in obedience to a letter from the Secretary of the Treasury?

A. Yes, for a place.

Q. A place for what?

A. For disinfecting.

Q. Was it understood that it was to be a place for disinfection?

A. I think so.

Q. You understood that from this letter of the 18th?

A. Yes, sir.

Q. Then on the 18th you understood that the Secretary of the Treasury contemplated using this machine that you saw up in Centre street?

A. From the letter.

Q. Didn't you say that you knew nothing whatever about the machine until you heard of it from Dr. Hamilton?

A. I didn't know it.

Q. You say this letter gave you the impression that that machine was going to be used for disinfecting?

A. I told you I had forgotten that any reference was made to that otherwise than that the Secretary had requested me to examine for a place.

Q. But did the Secretary make any allusion in this letter to this machine?

A. I don't recollect.

Q. Did this letter make any reference to that machine?

A. I don't remember.

Q. I want you to tell me exactly how you remember about that machine from the time you left Centre street until you saw it at the Baltic stores. Who spoke to you about it first; and, what did you hear about it?

(Handing the letter to the judge.)

The Court: The witness may answer the question so far as he can.

The Witness: When the surgeon general wrote to me asking for my opinion I wrote to him.

Q. Asking your opinion about what?

A. As to the efficiency of the machine. I then wrote to
281 him, as I have stated, saying that I thought by some other arrangement it might be made efficient for sanitary purposes, for disinfecting; that on receiving a letter from the Secretary of the Treasury, which I did not remember referred to the Baltic stores, or to a letter from Mr. Bartlett, but simply my recollection was requesting me to examine for a place for disinfecting. My impression was that the surgeon general and he had co-operated or was in conference in relation to the matter.

Q. What matter?

A. In relation to disinfecting.

Q. Did you understand that he and the surgeon general had a further correspondence than you had described upon the matter of that machine?

A. No, sir; I assumed it by knowing the relations between the surgeon general, who is an attache, if you please, of the Treasury Department.

Q. Don't you know that he is an attache of the War Department?

A. No, he is not—not the surgeon general of the marine hospital service. A surgeon of the marine hospital service is very different from the surgeon general of the army.

Q. What department does he belong to?

A. He is connected, as I say, with the marine hospital service.

Q. Is not that in the Navy Department?

A. No, sir. He is in control of that course which is put upon our revenue ships, and he has the superintendence of such hospitals as receive American sailors who are crippled or injured or sick when they come into port, such as is now on Staten island.

Q. Do you say that you assumed that Dr. Hamilton would report that to the Secretary of the Treasury, or did he tell you so?

A. He told me nothing.

Q. You simply assume that Dr. Hamilton would report that to the Secretary of the Treasury?

A. I inferred that, I say.

Q. From what?

282 A. From the relations between the surgeon general, connected as he is with the Treasury Department, and the Secretary of the Treasury. I may say that the Treasury Department had control of the epidemic fund. The surgeon general was the dispensor of that fund and the adviser of the Secretary of the Treasury in such matters as the expenditure of that epidemic fund; and, from their relations I thought that they had conferred together and that this letter from the Secretary was the result.

Q. And that is the only reason you had for supposing that they had conferred together?

A. Yes, sir.

Q. And you didn't think that until you got this letter?

A. I didn't know or dream that the Secretary of the Treasury took any interest in the matter.

Q. But you did think that after you got the letter?

A. I did.

Plaintiffs' counsel reads in evidence the letter from the Secretary of the Treasury to Dr. William M. Smith, dated December 18th, 1884, and the same is marked Plaintiffs' Exhibit X of this date.

Q. Is there anything in that letter about the machine? After hearing that letter read do you still say that it was from that letter that you deduced the conviction that Dr. Hamilton had reported to the Secretary of the Treasury the results of this test in Centre street?

A. No, I don't say that, but I say I thought he had communicated my letter to the Secretary of the Treasury.

Q. Why did you think that?

A. Because I could form no other reason for it. I didn't know that the Secretary of the Treasury had taken any interest in the selection of a place.

Q. I am not speaking about the selection of a place. I am asking you about this machine, when you first heard of it after the experiment in Centre street. Bear in mind that I am not speaking to you of this place, but I am asking you when you next 283 heard about this machine after you left Centre street that time?

A. I never heard anything more about the machine. I never knew where the machine went to. I knew nothing further about it until the surgeon general wrote me asking my opinion.

Q. Was that all he wrote you?

A. That is all.

Q. You swear to that?

A. I do.

Q. And that ended your connection with the machine that time, did it?

A. Yes, sir.

Q. How did you come to be in the Baltic stores the day of the experiment?

A. I have told you that this letter of the Secretary came to me requesting me report to him as to its availability——

Q. Of the machine?

A. No, sir.

By the Court:

Q. When did you next hear of the machine?

A. I only inferred that this was to be the machine.

By plaintiffs' counsel:

Q. Do you mean to say that your inferred that the warehouse was to be the machine for disinfection?

A. No; I inferred that was to be the machine from the letter of Surgeon General Hamilton to me, and from the Secretary's letter to me.

Q. The one I have just read?

A. Yes, sir.

Q. In what part of that letter do you find a suggestion that this or any other machine was to bo used for the purposes of disinfection?

A. There was no other machine, and from Surgeon General Hamilton's knowledge of it, and from his connection with the Treasury Department, I inferred that was the machine.

Q. How do you know there was no other?

A. I know as well as a man could know that there was no other means of disinfecting in the bay.

Q. You understood then when that letter came to you that the Secretary of the Treasury had already decided to use this machine for the purpose of disinfection?

A. I inferred that, I say.

284 Q. You believed it, didn't you?

A. Well, I did not because I didn't believe that he would do it unless it was sanctioned by the health authorities.

Q. Did you believe that that letter of the Secretary then meant that you were to go and examine that machine further?

A. No, sir.

Q. Did you infer from that letter that the Secretary had decided to use this machine?

A. I believed they intended to use it if a proper place was selected.

Q. Did you have any information except that letter?

A. Only what that letter contained.

Q. That is all the information you had?

A. Yes, sir.

Q. And from that letter, which does not mention the word machine, you inferred that the Secretary of the Treasury had already decided to use this machine that you saw there in Centre street. Is that your testimony?

A. No; I didn't say he had decided to use it; but I say he decided to inquire and find out if there was proper place to use it.

Q. Then do you mean to say that the Secretary had determined to use — if he could find a proper place?

A. I inferred that.

Q. From the letter?

A. Yes.

Q. And you desire now to be understood that you had no other source of information?

A. I hadn't any.

Q. And you deduce that inference from that letter which does not mention the word machine?

A. That is all the inference you have to draw it from.

Q. Read that letter through carefully and show me a sentence of any kind that suggests the use of the machine for disinfecting?

A. I don't think there is any.

Q. What did your infer, then, from it? Did you draw the inference that the Secretary had decided to use this machine which
285 you saw in Centre street from this letter; and, if so, where
do you find such an inference in it?

Objected to as having been already answered.

The Court: It seems to me the witness has answered the question. He has stated that Dr. Hamilton knew of the machine and had written to him about it, and knowing the relations between Dr. Hamilton and Secretary of the Treasury, when he received this letter the witness supposed that the Secretary had decided to adopt that machine and had requested him to find the place where it could be used.

Q. Does the judge describe accurately your testimony?

A. Yes, sir.

Q. The source of your information was what you knew of the relation between Dr. Hamilton and the Treasury Department?

A. That is all.

Q. What did you know about that?

A. I only knew they were connected officially.

Q. And you know that Dr. Hamilton was in the employ of the Treasury Department?

A. I don't know as he was in the employ of the Treasury Department, but I knew he was in the employ of the Government, and that he was the head of a department, which was a subordinate department of the Treasury Department.

Q. At the time this letter was written, and at the time, as you say, you had inferred from the letter that Dr. Hamilton had recommended the machine to the Government and the Government was going to adopt it, you knew that the experiment had been a failure, didn't you?

A. It was not efficient, according to my judgment.

Q. Then, what was not efficient must have been a failure?

A. Yes; was then.

286 Q. Then I understand you to say that at the time you received this letter you inferred from it that Dr. Hamilton had recommended to the Treasury Department, and the Treasury Department had decided to use a disinfecting machine which you knew upon an experiment had proved to be a failure; is that your testimony?

A. No, sir; I presumed it was for the purpose of setting it up and using it as an experiment.

Q. But so far as you had known at that time it was a failure?

A. Yes, so far as I knew.

Q. And so far as Dr. Hamilton knew; didn't you and he agree in your conclusions about it, in Centre street, that the machine did not accomplish its purpose?

A. Yes; but we thought it might be made effectual.

Q. Then do I understand you to say now that Dr. Hamilton had, according to your understanding, recommended that machine and the Government had decided to use it when you got this letter of December 18?

A. I inferred that they desired it to be put up.

Q. You inferred that, although at this time you knew it was a failure?

A. I knew nothing more than what I tell you.

Q. At that time, so far as you knew, it had not succeeded in the purposes for which it was constructed?

A. Exactly.

Q You were health officer of the port, and you knew that this was the disinfecting apparatus that the Government contemplated using for the safety of the health of the people?

A. Yes.

Q. And you recommended the Bartlett stores as a place of disinfection, didn't you?

A. I did, with a reservation.

Q. With what reservation?

A. That the health authorities should be consulted before its selection.

Q. What health authorities?

A. In Brooklyn.

Q. That is Dr. Raymond?

A. Yes, sir.

Q. And you consulted with him?

A. I consulted with him at the time.

Q. And you knew he was favorably disposed towards the Bartlett's?

A. I did.

287 Q. So that when you reported to the Government that the Bartlett store was the proper place you knew that the health officer in Brooklyn would approve of it, didn't you?

A. I didn't report it was the place. I reported that it was a suitable place from its isolation.

Q. Did you report that any other place was suitable except that?

A. I did not.

Q. So that you reported to the Secretary of the Treasury one suitable place, and that was the Baltic stores?

A. Yes, if the health authorities agreed to it.

Q. But you had already seen the health authorities in Brooklyn?

A. I thought they should consult them.

Q. But you had consulted them?

A. Not as to the adoption of the place by the Government.

Q. Didn't you tell us a moment ago that you and Dr. Raymond went together?

A. We decided that that would be a suitable place, but it was not that the——

Q. Well, you knew that Dr. Raymond approved of the place?

A. I knew he thought it was a sufficiently isolated place.

Q. And then you told the Government that you would recommend it, providing the health officer—who you already knew was in favor of it—would also recommend it?

A. I said that the health authorities of Brooklyn should be consulted before any conclusion was reached.

Q. Doctor, how long have you been health officer?

A. About seven years.

Q. When did you take any steps to prevent the disinfection of rags until December, 1884?

A. In 1883.

Q. What did you do about disinfecting them?

A. We endeavored to boil rags abroad.

Q. You endeavored to do so?

A. We formulated a plan.

Q. In 1883, did you suggest any process of disinfecting in this port?

A. No, sir.

288 Q. You didn't go about examining any machines then?

A. No, sir; there were none to examine.

Q. In 1884?

A. There were none.

Q. You never heard of a machine for the disinfection of rags until this young man came and told you that it would be better for you to go and see this one?

A. No, sir.

Q. How did you come to go to that experiment, in January, in the Baltic stores?

A. In this conversation with Dr. Raymond——

Q. You mean the conversation that was had upon this letter of December 18th?

A. (Continuing:) Dr. Raymond and myself talked the matter over and we determined——

Q. Who began the talk?

A. We determined not to approve the disinfection of rags in the bale unless we had conclusive evidence that it would destroy disease germs, and that we would have a biologist come and make practical experiments with this process. It was suggested by me that Dr. Billings, of the U. S. Army, be selected, to which Dr. Raymond agreed. I wrote to Dr. Billings, and he replied, stating that he could not attend, and that Dr. Sternberg, of the U. S. Army—then at the Johns Hopkins university—was much more up in that thing, and he referred me to him. I then wrote to Dr. Sternberg, and received a reply from him stating that he would come.

Q. What happened after that?

A. He finally set a time when he would come.

Q. How did you come to go and see the machine?

A. I think Mr. Parker communicated with me that he would have the machine so that it could be tried.

Q. Were you surprised to find the machine in Mr. Bartlett's hands?

A. It was not in Mr. Bartlett's hands. It was in the Kelsey stores.

Q. That was one of Mr. Bartlett's stores, wasn't it?

A. I think Mr. Parker came to me to know what correspondence——

289 Q. To know what?

A. To know what the result would be, or when the experiment would be made.

Q Do I understand you to say that you, on your own account, in consultation with Dr. Raymond, without any authority from Mr. Parker or Mr. Bartlett or anybody else, invited these scientists to come and see this machine in operation?

A. I did.

Q. Who gave you authority to invite Dr. Billings?

A. I say that Dr. Raymond and myself agreed that we would if they put the plant up there.

Q. If who put the plant up?

A. Mr. Parker.

Q. Had you seen him about putting it up?

A. Mr. Parker had seen me at some time.

Q. Was it before this 18th of December or subsequently?

A. I can't remember. I haven't any recollection about Mr. Parker's communication with me, only as I understood him he would put a plant up there.

Q. When did you first hear of Mr. Bartlett in connection with this machine?

A. I never knew he had any connection with it until about midsummer.

Q. Until midsummer?

A. No, sir.

Q. You didn't know it at the time of the experiments?

A. No, sir.

Q. You were at the health office in Washington?

A. Yes, sir.

Q. Did you see Mr. Bartlett there?

A. I did.

Q. Did he speak to you about the machine there?

A. No, sir.

A. This Treasury Department circular was submitted to you there, of December, 1884?

A. In connection with the committee of the health conference.

Q. Wasn't it submitted to you personally?

A. No, sir.

Q. You never read it?

A. I never saw it. The committee drew it.

290 Q. Were you a member of the committee?

A. Yes, sir.

Q. Didn't you see that proposed circular?

A. I came away before it was drawn. Dr. Baker and a member of the Boston board of health, I think, and Mr. Erastus Brooks and one or two others, were some of the parties who entered into the discussion of the letter which should be sent to the Secretary of the Treasury.

Q. Did you see that circular?

A. I did not.

By the Court:

Q. The question is, did you see that Treasury circular before it was issued on December 22d?

A. No, sir; nor was I consulted about it except as part of the committee.

By plaintiffs' counsel:

Q. What did you know about it as part of the committee?

A. Nothing, except that letter which the committee drew up to the Secretary of the Treasury which you have read here today.

Q. That letter you saw?

A. Yes, sir.

Q. Who got up that conference?

A. I think all the United States health authorities were engaged in it.

Q. But who invited it?

A. I don't know.

Q. You were there?

A. Yes, sir.

Q. And you were one of the committee?

A. I was one of the committee on Federal relations.

Q. And when this circular of December, 1884, was gotten up, it was on the recommendation of your committee?

A. It was under the recommendations of that letter.

Q. Was not this circular gotten up by the Treasury Department after consultation with the members of your committee, and its terms discussed between you?

A. No, sir; not the terms of the circular.

Q. Were not the terms discussed?

A. No, sir.

291 Q. Do you mean that the terms of the Treasury circular as to disinfectants was not discussed in that committee?

A. Only the letter which I referred to, which the committee sent to the Treasury Department.

Q. And you mean to say that you had no communication before with the Treasury except that letter?

A. Not any.

Q. You never saw any officer of the Treasury Department about it?

A. Never; either before or since.

Q. You had never had any personal consultation with any of them while you were sitting there as a delegate to that conference for the purpose of devising rules to be enforced by the Treasury Department?

A. I did not. I never saw the Secretary of the Treasury again. I saw Secretary French at the experiment.

Q. And you never discussed that matter?

A. Never.

Q. When was the experiment?

A. The 9th of January.

Q. Did you look at the patent of this process?

A. I never did.

Q. You never saw the patent?

A. No, sir.

Q. Nor the drawings?

A. No, sir.

Q. Didn't you see the patent and the drawings together?

A. No, sir; I saw it in the Paper Trade Journal, I think.

Q. On December 22, 1884, the Treasury Department issued a circular?

A. Yes.

Q. And one of the principles of disinfection provided for by that circular is No. 4 (plaintiffs' counsel here reads the same), was there any machine or system known to science by which the superheated steam or sulphur dioxide could have been injected in the bale except this one?

A. No, sir; not that I know of.

Q. Didn't you as a matter of fact, yourself, in a disinfection regulation issued by you in July, 1885, use identically the same
292 language as that which I have just read to you from this circular. Was there any means by which that could be applied?

A. Certainly.

Q. What was it?

A. Rags are scattered upon racks.

Q. That would mean that the bales would have to be taken apart?

A. No, sir; before baling. That referred to the process before shipment.

Q. But after shipment could they have been disinfected?

A. No, sir.

Q. Except by this machine?

A. That is all.

Q. So that the terms which you give as to the disinfection of rags applied only to such rags as could be disinfected by this particular machine?

A. Disinfecting in this way.

Q. Are you aware that the language of the Treasury circular is exactly the language of the patent?

A. No, sir.

Q. Did you ever know that before?

A. No, sir.

Q. You never saw the patent?

A. I never knew of it.

Q. And yet you knew that Bartlett was there in Washington?

A. I saw him there.

Q. Frequently?

A. No, sir.

Q. Didn't he introduce you to one of the Assistant Secretaries of the Treasury?

A. He introduced me to Mr. Coon.

Q. Did you have any conversation with him?

A. No, sir; I was only there as a delegate.

Q. Did you tell him you were a delegate?

A. They knew it.

Q. The Treasury officials knew it?

A. I presume they did.

Q. After this circular was issued in the Treasury Department, by which the rags had to be disinfected by this machine—that was December 22, 1884, wasn't it?

A. Yes, sir.

Q. At that time this machine was not sufficient, so far as any test had ever been made?

A. No, sir; not as it was then.

293 Q. And you had been one of those health officers, in connection with Dr. Hamilton, who had examined that machine in Centre street?

A. Yes, sir.

Q. And at that time that machine was not competent for the purpose it was intended to be, according to the conclusion of Dr. Hamilton and yourself?

A. Yes.

Q. And you never knew it had been improved until the experiment of January 9th?

A. If I did I have forgotten it.

Q. Did you then, as a public officer sworn to perform your duty, draw the attention of the Treasury Department to the fact that the system of disinfection prescribed by them in this circular of December 22d, required the use of a machine which you then believed to be imperfect?

Defendants' counsel: I object. The witness testified that the machine he saw in Centre street was used with a single screw, and that he stated that it would be more satisfactory by multiplication of the screws. The witness says that he suggested the use of three screws, which is the patent.

Objection overruled; defendants' counsel excepts.

A. Because I believed I had guarded against all danger of its imperfection by having a biologist test with disease germs so as to give us practical evidence of its efficiency, whatever it was.

Q. When was that test made?

A. The 9th January.

Q. On December 22d no such test had been made?

A. No, sir.

Q. When this circular was issued, then, on December 22d, providing for that disinfection at the port of New York, you did not know then that this machine had been improved so as to make it perform its duties?

A. No, sir.

Q. Then I ask you why you, the health officer of this port, did not notify the Treasury Department that the sole machine 294 which could disinfect these rags according to that provision, No. 4, was imperfect for the purpose for which it was made, as you then understood it?

A. We proposed to know whether it was or not.

Q. Didn't you know at that time it was insufficient?

A. As it was; but we proposed to have the test made to prove its efficiency.

Q. But you had already proved its inefficiency?

A. Yes, sir; as it was then.

Q. Then, so far as you knew at that time that machine was imperfect, and yet you permitted this regulation to be made by the Treasury Department?

A. I hadn't any knowledge of any improvement, but the Government had taken upon itself to have a place selected to do this, and we proposed to guard the public by an arrangement between Dr. Raymond and myself by which its efficiency should be tested. That is all.

Q. When was that arrangement made for the experiment?

A. I don't remember what day it was.

Q. I will change the question. It was not made until after you had recommended Bartlett & Company's stores?

A. No, sir; not until after I had recommended them.

Seventh day.

Defendants' counsel produces the list of rag-inspectors.

Q. Last night when we adjourned we were discussing the test which was made in the month of January in the Bartlett stores, and I had asked you at whose invitation you attended that test. Can you tell me now?

A. A man by the name of Weber Parker.

295 Q. Mr. Weber Parker also invited you to attend the experiment in Bartlett's stores in January, as well as the one in Centre street?

A. That is my impression, sir.

Q. Whom did you find at that test in the Bartlett's stores in January?

A. I found there Dr. Sternberg, his assistant, Dr. Raymond, the health commissioner of Brooklyn, and one of the representatives of the Boston board of health.

Q. Who was that?

A. I can't tell you his name; I never met him before. There were also present Collector Robertson, Assistant Secretary of the Treasury French, the health officer at Baltimore, and the health officer at New Haven. Those are all whose names occur to me. There were fifteen or twenty persons present; at least twenty. Mr. Pollock, I believe, was also there.

Q. Was there a gentleman present named Prof. Bell?

A. Not that I know of; I don't know any Prof. Bell.

Q. Did you ever meet a Prof. Bell?

A. I don't know whom you mean.

Q. Or Dr. Bell?

A. Oh, it you mean Dr. A. N. Bell of this city——

Q. Well who is Dr. A. N. Bell of this city?

A. He is the editor of a publication called the Sanitarian.

Q. Well, did he ever speak to you about this disinfecting machine?

A. He never spoke to me about the machine.

Q. Did he ever speak to you about a system of disinfection, carried on by this machine?

A. No, sir; not particularly about this system.

Q. Did you ever know of any other system?

A. Yes, sir; Dr. Bell is an enthusiast on the subject of disinfection by steam.

Q. My question was not whether he was not an enthusiast, or a person of depressed mental views. I ask you whether you had ever heard of any other system of disinfection by steam, than this one which Mr. Parker invited you to attend?

A. Certainly.

Q. You had?

A. Yes, sir.

296 Q. What was that other system?

A. A system of introducing steam into the holds of ships, by means of the generation of the steam from a tug alongside.

Q. We are talking of rags in bales?

A. Oh, I didn't so understand you. I supposed you were talking of what you said.

Q. Please be good enough to understand, that I am speaking about the disinfection of rags; did Prof. Bell, or Dr. Bell, ever speak to you about the disinfection of rags?

A. I think not.

Q. By steam?

A. It may have been so, but I have no recollection of any discussion of the matter.

Q. Was he there at that test?

A. He was not; I think.

Q. Who invited Dr. Sternberg to go there?

A. I did.

Q. Who paid him for being there?

A. I did.

Q. How did you come to pay Dr. Sternberg for his appearance there?

A. My correspondence with him, in which he said that for the assistance of health authorities, he named what his sum would be.

Q. Did you understand that this then, was for the benefit of the health authorities in general, or yourself in particular?

A. Emphatically so.

Q. For which?

A. For the health authorities, and for the benefit of the public.

Q. You gave him thirty dollars for the benefit of the health authorities in general?

A. No, sir; for my own benefit, and the benefit of the public.

Q. You mean to be understood as saying, that $30, that you gave Dr. Sternberg, for attending at that test, was for the benefit of the public?

A. Yes; in one sense.

Q. And in another sense wasn't it for the benefit of the machine?

A. No, sir.

Q. Was it not upon Dr. Sternberg's report that this machine was considered and reported by you and the others to be *in*effective
297 means of disinfection?

A. I don't think the experts present declared anything about it.

Q. Wasn't it all referred to Dr. Sternberg?

A. He made the report on it.

Q. Did anybody else put sulphurous acid gas into a bale of rags except Dr. Sternberg?

A. No, sir.

Q. Who put the germs of disease on which the experiment was made into that bale of rags?

A. Dr. Sternberg and Dr. Raymond.

Q. Did Dr. Raymond also put a germ of disease in?

A. He assisted.

Q. Who brought germs there?

A. Sternberg.

Q. Did Dr. Raymond bring any there?

A. No.

Q. Who put them in the bale of rags?

A. I think Dr. Sternberg did.

Q. Who took them away?

A. He took them away.

Q. Whom do you mean by "he"?

A. Dr. Sternberg.

Q. Who reported subsequently upon the effect of the germs of disease?

A. Dr. Sternberg.

Q. Did anybody else report upon it?

A. Not upon those experiments.

Q. Upon any other experiments to your knowledge outside of this one that Dr. Sternberg reported on?

A. No.

Q. Whom did Dr. Sternberg send his report to?

A. It was published in the Medical News.

Q. Was it sent to anybody else that you know of?

A. No, sir; not in relation to steam.

Q. In relation to anything else?

A. Yes, sir; in relation to the dioxide of sulphurous acid gas he wrote to me.

Q. He wrote to you that the sulphurous acid gas was a failure?

A. Well, in part a failure, and gave me his tables.

Q. What do you mean by "in part a failure"?

A. Well, that it hadn't killed the germs.

Q. Then it was a failure?

A. Not altogether a failure.

298 Q. It was a failure to the extent that it didn't destroy all the germs of the disease?

A. Yes, sir.

Q. Was that sulphurous acid gas injected by the same process that the steam was injected; was the same machine used?

A. The same tubes were used.

Q, Was it the same machine?

A. I don't know what the machine was; it was out of my sight in a measure.

Q. All that was visible to you in the way of machinery was used for the sulphurous acid process as well as the steam process?

A. Yes, sir.

Q. So that whether Dr. Sternberg reported in favor of the sulphurous acid process, or the steam process, the machine was the same machine used anyhow, is that it?

A. I think so.

Q. Now I come back to the question. Dr. Sternberg's report was the one on which you decided, as the health officer of this port, that the disinfecting machine in Bartlett's stores was an efficient means of exterminating disease in bales of rags?

A. Yes, sir.

Q. And for that report you paid Dr. Sternberg $30?

A. I didn't pay it for the report.

Q. For the services which led to the report and the report?

A. I can't say that I did, for his services.

Q. For what did you pay it?

A. For his expenses.

Q. What interest did you have in the machine that induced you to pay $30 to Dr. Sternberg for his expenses?

A. I had no interest in the machine.

Q. The report resulted in the adoption of this machine as the means of disinfection, at any rate?

A. It was accepted by me as efficient.

Q. And for that you paid him out of your own pocket?

A. Not for that. I paid his expenses.

Q. Well, you paid him out of your own pocket for something?

A. I paid him what he said was his expenses.

299 Q. You didn't ask Mr. Parker to pay that money?

A. No, sir.

Q. And yet it was at Mr. Parker's invitation that you attended this experiment?

A. That is my impression.

Q. And you paid Dr. Sternberg $30 for expenses for attending that test, and still you didn't ask Mr. Parker to bear any portion of that expense?

A. I did not.

Q. And you did not ask anybody else to do so?

A. No, sir.

Q. You never asked the Paper Stock Disinfecting Company, or any of its agents, to bear any part of that expense?

A. No, sir.

Q. Did you make any communication to the Secretary of the Treasury as to the results of this experiment?

A. I think not.

Q. The Treasury Department you said had already decided to use this machine as the means of disinfecting at this port?

A. I don't know what they had decided.

Q. Didn't you say yesterday that you inferred so from the letter?

A. That was my impression.

Q. Wasn't it your understanding?

A. It was my impression that they intended to use it.

Q. Can you make a distinction between an impression and an understanding?

A. Yes, sir.

Q. It is a pretty important matter for you to understand what the Government intended to do in relation to this subject of disinfection, wasn't it?

A. Indeed it was.

Q. Did you then understand that by the circular of December 22d, 1884, the Treasury Department meant that this machine should be used in order to disinfect rags?

A. I say from my impression they did.

Q. Didn't you acquire more than an impression upon that subject?

A. I didn't, except from their letter to me requesting me to examine this place and report upon it.

300 Q. This was a matter that concerned the administration of your office?

A. Of course.

Q. And didn't you take pains to acquire more than a vague impression as to what the Treasury Department wanted done in the way of disinfection?

A. I had nothing to do with what they did. My duty was to determine whether the method was efficient or not.

Q. And at the time the Treasury Department adopted this machine, you thought it was not efficient?

A. Not as it was then.

Q. But you had no knowledge of any improvement in it?

A. No, sir.

Q. You had another conference which you got up in April, 1885?

Defendants' counsel: I object to the question as containing an insinuation inferring that the witness got up this conference, which is not true.

Objection overruled. Defendants' counsel excepts.

A. I solicited a conference with the health authorities.

Q. You say now that you solicited a conference?

A. I did.

Q. With whom did you solicit the conference?

A. With Dr. Durgin, of Boston, Dr. Stewart, of Baltimore, the health officer of New Haven—whose name I have forgotten now—the secretary of the New York State board of health, E. M. Hunt, of New Jersey, a member of the city board of health, Dr. Johnson and Dr. Raymond, the health commissioner of Brooklyn.

Q. Did you hear Dr. Raymond's testimony here the other day?

A. I did.

Q. Was it all true in every respect?

A. So far as his impressions are concerned, I have no doubt it is.

301 Q. You heard Dr. Raymond state that the rags from the

Vigilant were entirely free from infection. Did you know anything to the contrary?

A. I didn't hear him state that.

Q. Do you mean to say that Dr. Raymond did not state in your hearing in court, that as far as the rags from the Vigilant were concerned, he considered them entirely safe, and, unless he had considered them so, he would not have allowed them to be landed?

A. He thought they were safe to be admitted.

Q. Did you not hear him state that in his testimony yesterday, that there was no danger to be apprehended from those rags?

A. No, sir; not in the broad sense that you put it.

Q. You say that you didn't hear him say those words regardless of the sense?

A. That they were safe to be landed, or safe where they were.

Q. Did you not hear him state that it was safe to break them, and that some of them actually were broken?

Objected to as immaterial. Objection overruled. Defendants' counsel except.

A. I think he said that he wouldn't have apprehended any danger from their being broken.

Q. (Repeated.)

A. I say with the qualification they were landed in isolated warehouses.

Q. Did you hear Dr. Raymond say that?

A. I knew that he knew they were to be landed there.

Q. Just answer my question and nothing else. Did you hear Dr. Raymond state in substance that he considered there was no danger from infection of those rags whether in bale or broken?

Objected to as being already answered. Objection overruled. Defendants' counsel except.

A. I didn't understand him in the sense you put it.

302 Q. You didn't hear him say anything substantially to that effect?

A. Not that there was no danger of infection.

Q. In December, 1884, you had received a circular from the Treasury Department in which certain regulations were made for the importation of rags?

A. I did.

Q. Did you consider that that completely covered the subject?

A. I did, in a sense.

Q. Did you consider that the regulations prescribed by the Treasury Department would be sufficient to protect the health of this port if they were properly carried out by the health officer?

A. If properly carried out by the authorities designated by the Secretary of the Treasury.

Q. You didn't consider then that these regulations if carried out would amply insure the health of this port?

A. If efficiently carried out.

Q. Now, you say you solicited a conference in the month of April, 1885?

A. Yes, sir.

Q. What was the object of that conference?

A. The principal object of it was to consider the danger from the admission of cholera, to determine what the opinion of the health authorities was as to its incubative periods, as to the extent of the restriction which should be imposed in time.

Q. At the time you brought this conference around, these regulations which you say were sufficient to protect this port were in actual operation, weren't they?

A. Yes, sir.

Q. Did you desire to have new regulations made?

A. I desired to have those measures which I tell you of determined by the opinion of these health authorities.

Q. Which measures?

A. Particularly with reference to the length of time which cholera was incubating, and with the time that emigrants on arriving should be held in control to develop the contagion with which they might be affected.

Q. Was not that subject discussed at the December conference in Washington?

A. I don't think it was.

303 Q. Didn't I understand you to say that the object of the December conference in Washington was to consider what measures should be taken in order to preserve ports of this country from infection of all characters from abroad?

A. In a generral sense, it was.

Q. Was the conference in April, in a particular sense, upon the same subject with reference solely to cholera?

A. No, sir, to contagion of all infectious diseases.

Q. What new matter had developed after the conference of December that induced you to solicit the conference of April?

A. The expression of the judgment of the health authorities at that juncture, an interval of six months having elapsed and an opinion of the measures that should be imposed for the ensuing season.

Q. Was there any expression of opinion conveyed to you between December, 1884, and April, 1885, that caused you to believe that the regulations adopted by the conference in December, 1884, were insufficient to cover the necessities of the public health?

A. I felt that the local health authorities were those upon which all the measures should depend: that the Government was pursuing its own course in this matter, and that the health authorities were a law, if you please, in the execution at least of the laws of their respective localities, and that there should be some uniform action.

Q. Let me see if I understand you. You considered the regulations of the Treasury Department ample, so far as the Treasury Department was concerned—am I right so far?

A. Yes; if, as I said before, they were efficiently carried out.

Q. Oh, of course; and then you called this conference in April, 1885, for the purpose of having the local authorities take action for the protection of health?

A. In respect to other matters as well.

Q. What other matters?

304 A. I have told you in respect to the incubative period of cholera, particularly.

Q. This was to be a conference for local health officers, and others to act independently of the Treasury Department?

A. It was, but should be supported—as I believed I was with the responsibilities on me—by the concurrent opinion of the health authorities surrounding me.

Q. By that do you mean, in this county?

A. No, sir; I mean on the Atlantic seaboard, principally.

Q. After this conference adjourned you promptly sent the report of that conference to the Treasury Department, didn't you?

A. Not immediately.

Q. What steps, if any, did you take in this locality after this conference that you hadn't taken before; what additional regulations did you make; what steps did you take as a result of this conference?

A. I took no immediate steps.

Q. What ultimate steps?

A. To impose the restrictions which the conference recommended.

Q. What additional restrictions did you impose after this conference adjourned that were not in existence before?

A. I have told you that it was instructive in a measure to obtain the opinion of the health authorities.

(By the Court:)

Q. Did you impose any additional restrictions?

A. I did not.

(By plaintiffs' counsel:)

Q. Did you at any time afterwards?

A. No.

Q. What did you do after this health conference adjourned other than to send its conclusions to the Secretary of the Treasury?

A. I didn't do anything.

Q. The sole result of that conference, so far as you were concerned, was that you sent its proceedings to the Secretary of the Treasury at Washington?

A. Yes, sir.

305 Q. There had been a change in the administration a month before that?

A. Yes, sir.

Defendants' counsel: I object to counsel bringing in any further question of politics in this case. I move to strike out the answer.

The Court: I don't know of any question of politics that has been brought in the case yet.

Defendants' counsel: Is that another corner-stone that you are trying to lay?

Plaintiffs' counsel: It has a very important bearing on this case, because we contend that the report was sent on for the purpose of influencing the new Secretary favorably in regard to this machine.

The Court: I will allow the question to stand.

Defendants' counsel except.

Q. Was the method of disinfection by Mr. S. Weber Parker's machine discussed at this April conference?

A. It was not discussed—the method was not. It was referred to in the conclusions.

Q. By whom?

A. I think by Dr. Raymond and Dr. Carroll.

Q. Dr. Carroll?

A. Yes, the secretary of the New York State board of health. He principally formulated these conclusions.

Q. What conclusions—about the machine?

A. No, sir.

Q. About the process of disinfection?

A. The conclusions of the conference.

Q. I asked you if this process of disinfection which was in use at Bartlett's stores, and to which your attention has been called by Mr. Parker, had been discussed in this April conference?

A. Not that machine.

Q. Was the process discussed?

A. The process only, so far as the measure of heat necessary to disinfect.

306 Q. Did you at any time during this conference describe this process?

A. I don't remember.

Q. Did you recommend it?

A. I don't remember that I did. It was known to all the parties present.

Q. And you can't tell whether it was discussed or recommended for adoption at other ports?

A. Only so far as Dr. Raymond recommended the amount of heat to be produced for the purpose of disinfection.

Q. Did he recommend it by that process?

A. Yes, sir.

Q. And did you recommend it by that process?

A. I didn't say anything about it.

Q. Well, you now say something about it. I ask you now: Did you recommend it?

A. I did not say anything about it there except as I concurred in the conclusions of the conference.

Q. And did this conference recommend this process?

A. Yes, sir; so far as the production of heat is concerned.

Q. How many ports put it in operation?

A. I don't know.

Q. Did any one outside of Boston?

A. Yes, sir.

Q. What?

A. Baltimore.

Q. This same machine?

A. No, not the same machine.

Q. Did they adopt this Parker process in the port of Baltimore?

A. They never had occasion to put it in use. The importation of rags there wasn't much.

Q. Did they adopt it in New Haven and Portland?

A. There are not many rags imported at Portland; there are at New Haven.

Q. There are rags imported to Perth Amboy?

A. No, sir.

Q. Don't you know of rags being delivered there?

A. I did.

Q. And in Philadelphia?

A. I heard so.

Q. From whom did you hear that?

A. By common rumor and by newspapers.

307 Q. By common rumor, more or less known as Mr. Bartlett?

A. No; I don't allude to him.

Q. Did you ever tell Mr. Bartlett that you hadn't passed the goods of the Lucy Nichol?

A. No, I never did.

Q. If Mr. Bartlett quoted you so before the Philadelphia authorities, it was without authority, was it?

A. I never told him that to my recollection.

Q. Now, we come back to the date of the importation in the month of May. This regulation in the Treasury Department provides that if goods be shipped before the 1st of January, they may come in without any disinfecting; is that so?

A. Yes, sir.

Q. And that was adopted with your concurrence and approval?

A. Yes, sir, with the qualification that they were not from a cholera or yellow-fever infected port.

Q. Did you ever hear of the city of Hioga, in Japan, being infected by cholera or yellow fever?

A. Not at that time.

Q. Within six months of that?

A. No.

Q. So that, so far as you were concerned, Hioga was free of any infection of cholera or yellow fever?

A. So far as I knew.

Q. So far as you knew there was no danger of infection from any rags imported from that port, if shipped before the 1st of January?

A. Not from cholera or yellow fever.

Q. Was there any danger of any other disease?

A. Oh, yes.

Q. What disease was prevalent in that port, to your knowledge?

A. There were other diseases, small-pox.

Q. Was small-pox raging in Hioga at that time?

A. It was in Japan, but I can't say to what extent.

Q. You know how large Japan is?

A. I have some conception about it.

308 Q. How large is it?

A. It has a population of about fifty millions of people.

Q. And you say if there was small-pox in some one port of Japan, that that was something to alarm you about the port of Hioga?

A. Not necessarily.

Q. Would you consider the prevalence of small-pox in San Francisco at the present time any reason to apprehend its infection from goods imported from New York?

A. I would if it prevailed to considerable extent, and in rags particularly.

Q. You say there was some small-pox in Japan about that time?

A. Yes.

Q. What part of Japan?

A. I can't tell you what part particularly.

Q. You were talking about these goods imported to this country, and yet you can't tell us where the small-pox was raging?

A. I know it was reported at the time that there were some seven thousand cases in the six months previous to this.

Q. Where?

—. At various points in Japan.

Q. State one of them.

A. Reported by the consuls.

Q Reported to whom?

A. To the State Department.

Q. Will you now swear that you know of a single city in Japan, from a consular report inspected by yourself, in which small-pox was raging at or about the date of the importation of these rags?

Objected to. Objection overruled.

Defendants' counsel excepts.

A. I will read from an inspection of consular reports consolidated and reported by the secretary of the National Board of Health.

Q. Doctor, that is not what I asked you. I will repeat my question.

The Court: Did you ever read the report of the United States consuls?

The Witness: Only as communicated to me by the National Board of Health.

309 Q. When was that communicated to you?

A. Well, generally weekly; may have been monthly. The National Board of Health have been very irregular in their reports from want of money to make them latterly. I have at times communicated with the secretary of the National Board of Health, Dunwoody, asking for his reports.

Q. Did you ever read a consular report in your life?

A. I have.

Q. On the subject of small-pox in Japan, about the 1st of January, 1885?

A. I haven't read the reports myself, except as reported to me by the secretary of the National Board of Health.

Q. Can you tell whether small-pox was raging in Japan on the east or west coast of that country?

A. I don't know where it was.

Q. Do you know where Hioga is?

A. It is on the coast.

Q. Which coast?

A. I don't know.

Q. Wouldn't it have some effect upon you in deciding whether these rags ought to be stopped if you knew on what coast of Japan small-pox was raging?

A. I depend entirely upon the reports made to me from various health authorities, or consular reports.

Q. Did you find anything in those authorities, such as they are, that you speak of, that showed small-pox to have been raging in Hioga?

A. I don't know of Hioga in particular.

Q. Was it not an important element in considering the question of the admission of these rags to know whether Hioga was in the neighborhood of the infected district?

A. Perhaps in some sense, but not altogether.

Q. What do you mean? In what sense?

A. Because rags are gathered there from a very large district of country.

Q. How do you know that?

A. From the very nature of things—that a cargo of three thousand bales of rags cannot be gathered in one city.

310 Q. There was only two hundred tons on board the Vigilante. Did you hear the testimony of Mr. Meyers, who happened to have been on the spot?

Objected to on the ground that Mr. Meyers testified that he left there in 1884.

Objection overruled. Defendants' counsel except.

A. Yes, sir.

Q. Did you hear him testify that in the nature of things, rags shipped from any particular port must have been collected in the neighborhood, for the reason that the cost of transportation was so high, that it wouldn't pay persons to bring them any great distance to the seaboard?

Same objection, ruling and exception.

A. I heard that testimony.

Q. You have said that you know from the very nature of things that these rags could not have been collected in the neighborhood of Hioga?

A. From a large district of country surrounding it.

Q. What do you mean by a large district?

A. Many miles.

Q. How many miles?

A. I don't know.

Q. Fifty or five miles?

A. That depends very much on the population.

Q. I understand you to say that you based your action in relation to these rags from Hioga upon the assumption that they must have been gathered from a large district of country and could not have been gathered from the immediate neighborhood of the city?

A. Yes, sir.

Q. You don't know where Hioga is—whether it is on the east, west, north or south coast?

A. I know it is on the coast.

Q. Is Japan a continent or an island?

A. An island.

Q. So there is a good deal of coast around it?

A. A great deal.

Q. And you can't state whether Hioga is on the east or the west coast.

A. I don't know.

311 Q. And in reaching a conclusion as to whether it was proper to allow those rags to come in you didn't even take pains to inform yourself whether Hioga was in the neighborhood of a small-pox infected district or not?

A. I only accepted the report of the conferences.

Q. But the report of this conference didn't say anything about Hioga?

A. No, sir.

Q. What information, then, did you have about Hioga?

A. I have told you from the consolidated reports to the secretary of the National Board of Health.

Q. I asked you if they made any mention of Hioga?

A. Not particularly.

Q. What reason had you for assuming that these reports had any reference to the country which surrounded Hioga?

A. I have no recollection of any particular report. I accepted the reports of the secretary of the national board.

Q. Haven't you told me they didn't mention Hioga at all?

A. Yes, sir.

Q. Why, then, do you mention that as the source of your information?

A. Because they speak of the locality that they have reports from within six months—six or seven thousand cases of small-pox.

Q. And you not knowing whether the seat of the disease was on the east or the west coast of Japan you proceeded to reach the conclusion that there was danger from these particular rags?

A. I believe there was danger from the whole Empire of Japan.

Q. You say that Japan consists of a single island?

A. Numerous islands.

Q. Fifty?

A. I don't know.

Q. Suppose small-pox was confined to one island would that be any reason to fear infection in another island?

A. Yes, if in proximity.

Q. What do you mean in proximity?

A. I say a free intercourse between the two.

312 Q. Do you think there is as much danger of infection between an island lying fifty miles off its shore as there would be of infection from a neighboring city on the main body of land?

A. No, sir.

Q. Would the fact of whether Japan consists of one or more islands have some effect upon you in inquiring which of islands was affected?

A. It would depend very much upon the frequency of the intercourse.

Q. Do you know anything about the frequency of the intercourse?

A. I don't know any special localities.

Q. Do you know anything about the means of communication?

A. No, sir.

Q. Do you know whether there are two islands or seven islands in the Empire of Japan?

A. I couldn't say.

Q. Will you swear there was any small-pox on the island in which Hioga is?

A. I only swear what I have told you, that my information from these consular reports——

Q. Never mind that. Not knowing that Japan consisted of more than one island, did you take pains to ascertain whether reports of the prevalence of this disease came from the east or the west shore of Japan, or from any one particular island in the Empire of Japan?

A. No, sir.

Q. Do you know how far apart these islands are?

A. No, sir.

Q. And you don't know how many there are?

A. No, sir.

Q. Do you know on which of the islands Hioga is?

A. I don't know.

Q. Do you know anything about the port of Hioga?

A. I don't know what the condition of it is, only I know that goods are shipped extensively from that port.

Q. I understood you to testify, in answer to your counsel, that you considered the danger of infection greater where a ship took on cargo at a dock than where the ship laid out further from the
313 shore, and the cargo was lightered out to her?

A. That depends upon circumstances.

Q. What circumstances?

A. Whether the port was infected with some disease.

Q. We are assuming a case where there was an infection. Is the danger of the vessel greater where she loads from a dock than where her freight is lightered out to her? You say your belief has been that rags have always been collected from a wide extent of territory?

A. Large quantities of rags.

Q. Do you take Dr. Sternberg as an authority on that question as well as the others?

A. To a considerable extent.

Q. In this pamphlet concerning the disinfection of rags, and which is the report of the special committee, this paragraph occurs: "I had previously supposed that rags from ports in Southern Europe where cholera was prevalent were liable to be shipped from any of those ports, but all of the merchants with whom I conversed assured me that this could never occur on account of the low price of rags as compared with the cost of land transportation. As a matter of fact, rags sent to each shipping port can only be collected within a limited area, the boundaries of which depend upon shipping transportation facilities by canals, rivers," &c. Reading that to you from the report of Dr. Sternberg, I ask you if you still insist on your answer that you believe that rags shipped from an infected port must necessarily have been gathered from a large area extending over many miles?

This is a report of the special committee on the disinfection of rags, which committee was appointed December 11, 1885. It is published by the American Public Health Association in 1886.

A. If there is a large quantity of rags, the extent of country from which they are gathered would depend upon the population of the locality and the number of rags.

314 Q. My question is, whether you still insist upon your original answer. Just answer that question, yes or no?

A. That would depend upon the locality entirely.

Q. Do you know where the port of Osaka is?

A. I know it is in the Empire of Japan; on the seacoast.

Q. On which island is it?

A. I don't know.

Q. Is it the northerly or southern island?

A. I don't know its locality.

Q. Can you tell whether that city was infected with small-pox?

A. Not at this time.

Q. Do you know of a single country in the world in which small-pox doesn't exist in one year?

A. Not in civilized countries.

Q. I now ask you if it would have any effect on your judgment as to the danger of infection, whether or not these rags were shipped from a dock connected with the mainland, or whether they were lying out some distance to sea?

A. Not in the case of small-pox.

Q. Do you think the danger would be lessened by their being lightered out to sea?

A. I don't think there would be any less danger.

Q. Do you know of any contagion that these rags carried?

A. I don't know of any.

Q. Didn't you say a short time ago that this circular of the Treasury Department of December 22, 1884, covered in your judgment every element of danger that existed to the health of the port, if properly carried out?

A. Yes.

Q. Didn't that circular expressly exempt from this disinfection rags that were shipped before the 1st of January?

A. Yes, sir; but that didn't cover the case.

Q. How doesn't it cover the case?

A. In this: That the contagion from other diseases besides cholera and yellow fever would exist the same previously to that time, and my answer to the collector was based upon that, upon sanitary reasons.

315 Q. Do you mean to say, then, that the circular adopted by your conference didn't cover all diseases that might be brought into this port by means of old rags?

A. It didn't cover all diseases.

Q. Then, it was not complete?

A. No, sir.

Q. Did you call the attention of the Secretary of the Treasury to that?

A. No, sir.

Q. Didn't you, as the health officer of this port, call the attention of the Secretary of the Treasury to an omission which you considered dangerous to the public health?

A. No, sir.

Q. Did you at any time as health officer call the attention of the Secretary of the Treasury to an omission which you considered dangerous to the public health?

A. I don't recall any communication.

Q. Have you not said that you didn't consider that the Treasury circular covered all danger from disease of imported old rags?

A. I said so far as the restrictions on the protection which the measures afforded it did.

Q. From all diseases?

A. It was operative before that.

Q. From all diseases?

A. I say so when they were infected; when the recommendations of the Treasury Department were carried out, I say.

Q. Didn't this circular provide that rags shipped before January 1st should be free from the necessity of disinfection?

A. Yes, but not because there was no danger in them.

Q. Why?

A. Because these rags were afloat and they were allowed to come in and relieve the merchants who had not been informed of the rule of the Treasury Department.

Q. And then it was a matter of accommodation to the merchants?

A. It was.

Q. And not a relaxation of a rule of the quarantine department?

A. Exactly.

Q. Coming down to the rags on the Vigilant; when did
316 you first hear of the Vigilant's having arrived here from
Hioga?

A. About the 30th or 31st of May.

Q. You allowed it to pass quarantine and go up to the dock?

A. She passed up.

Q. That was done under your regulation?

A. There was nothing discovered on the vessel.

Q. There was nothing discovered on the vessel to alarm you as to the health of the crew, or as to contagion from any of the goods she carried?

A. Nothing unusual.

Q. After the vessel passed up to the dock, when did you next hear about that cargo?

A. I can't tell you just what date.

Q. Can't you tell us what the next fact was in connection with it?

A. I can't tell you of anything that occurred until after I received the letter from the collector.

Q. That is the letter which you wrote a long answer to that we have got in evidence here?

A. I wrote an answer to it.

Q. You wrote quite a lengthy answer?

A. Yes, sir.

Q. How long did it take you to write that letter?

A. It must have been two or three days after I dated it before I completed it.

Q. And did you in the letter make any statement as to the fact that it was wrongly dated?

A. I did not.

Q. That is the first information you say you had of it?

A. As I remember; I remember nothing else.

Q. Didn't you see Lockwood & McClintock about it?

A. Perhaps it was before that that I saw them.

Q. Didn't you know that Lockwood & McClintock went down to Washington on this question?

A. I knew it; I don't know what time I knew it.

Q. Did you know when the first difficulty arose in the way of getting their cargo discharged?

A. I couldn't tell you.

317 Q. Did you see them at the health board?

A. I think I did.

Q Did you have any conversation with either Mr. Lockwood or Mr. McClintock as to the discharge of these rags?

A. I think I did.

Q. Do you remember what the conversation was and where it was?

A. It is my impression that both these gentlemen came to quarantine, though I wouldn't have known them afterwards. I couldn't have recognized them afterwards, I mean, if I had seen them. I think I saw them at the board of health; I am not quite clear about it, but I think so.

Q. Did you see Mr. McClintock at quarantine, and did he tell you that he had just come from Washington?

A. I don't recollect it.

Q. Do you remember the fact that he and you had a conversation, and he asked you to endorse on the back of the pass or write the subject of your conversation and what you said?

A. I don't recollect what he asked me, except to endorse or say something which would give the health department directions or advice to give them a discharge and a permit.

Q. Did he state the reasons why he asked you to do that?

A. I don't state them.

Q. Can you state them?

A. My impression is that it was because he said that they didn't come fully under the regulations of the Treasury Department as to being shipped, and that they had been shipped in part before the 1st of January.

Q. Didn't he tell you that he had been to Washington, and that the authorities wanted such a certificate of their freedom from disease as you told him you knew them to be free from?

A. I don't recollect.

Q. Wouldn't you recollect such a conversation?

A. I don't recollect it.

Q. Do you remember that he and Mr. Silas B. Dutcher came down on the same boat?

318 A. They were on the same boat when I was returning to quarantine one evening, I remember.

Q. Did you have a conversation with Mr. Dutcher on the boat?

A. I presume I did.

Q. And with Mr. McClintock?

A. I did.

Q. Did Mr. McClintock tell you then that he had been to Washington, and it only needed for you to say in writing what you said to him by word of mouth for him to get his rags?

A. I don't know what he said; I don't know what you mean when you say what he said by word of mouth.

Q. Don't you understand the meaning of that?

A. I don't know, because you have not expressed it.

Q. Did Mr. McClintock ask you to say in writing what you had said to him by word of mouth?

A. No, sir.

Q. Do you recollect what Mr. McClintock said to you?

A. I don't; not altogether.

Q. Do you recollect any part of it?

A. I recollect a part of it.

Q. What part of it do you remember?

A. He wished me to indorse something which would recommend the health department to discharge the goods, as I recollect.

Q. Don't you know that Mr. McClintock had the certificate of the health department at that time, and showed it to you in that interview?

A. I don't recollect it.

Q. Wouldn't you be likely to recollect it?

A. I think so.

Q. Did you hear Mr. McClintock testify to that?

A. I don't remember.

Q. Will you now say that Mr. McClintock did not show you this permit of the health department and say that his trouble was with the custom-house?

A. I say I don't recollect it.

Q. Do you remember what Mr. Dutcher was doing down there?

A. No, sir.

319 Q. You have heard Mr. Bartlett's description of the fact that they went down to Washington together?

A. Yes, sir.

Q. And Mr. Dutcher took a trip down to quarantine the next day?

A. Yes, sir.

Q. And did you have any conversation with him at all upon the nature of the trip to Washington and how the weather was down there?

A. No, sir.

Q. Do you remember what Mr. Dutcher was so anxious to see you about?

A. I don't think he was anxious to see me.

Q. Didn't you connect in any way the fact of his going to Washington with Mr. Bartlett and the next day making a journey down to Staten island?

A. I did not; I didn't ask him, nor he didn't tell me.

Q. He didn't tell you what he was doing there?

A. No, sir.

Q. Did you have any conversation with him?

A. I think I did.

Q. Do you remember what it was?

A. Social in general.

Q. Was it general enough to take in rags?

A. I don't remember that I spoke to him or he to me about rags.

Q. Had you heard anything about the Vigilante's cargo up to that time?

A. If I had, I don't recollect it.

Q. Do you mean to say that you don't recollect now that you heard anything whatever about the Vigilante's cargo until that day when Mr. Dutcher was on the boat after coming back from Washington, and you don't know what he was doing there, and Mr. McClintock asking you to indorse something on the back of your pass?

A. I heard nothing said by the gentleman interested in the cargo.

Q. That you are sure of?

A. I have no recollection of anything else.

Q. Did you not state on that day that you had received an affidavit charging this cargo with having been infected and 320 loaded after the 1st of January?

A. I don't think I did on that occasion. My impression is I said that at the board of health.

Q. Did you have such an affidavit at that time?

A. I told these gentlemen, as I recollect, at the board of health, that I had such an affidavit.

Q. Where did you get that affidavit?

A. It was sent to me by Mr. Scott Smith.

Q. Who is Mr. Scott Smith?

A. I don't know, except that is his name; he was at that time engaged upon the reportorial staff of some newspaper.

Q. And you got an affidavit from a man you didn't know?

A. I knew of him.

Q. What did you know of him?

A. I knew of him as such.

Q. As what?

A. As a reporter.

Q. Do you know whom he was a reporter for?

A. I had heard he was reporting in Washington.

Q. Who told that?

A. I cannot tell you, but in a general way I knew it.

Q. Can you tell me in a particular way?

A. I cannot tell you who told me.

Q. Would you know him if you saw him?

A. I think so.

Q. Who pointed him out to you?

A. I don't know.

Q. Where had you seen him?

A. Several months before.

Q. Where?

A. In New York.

Q. With whom?

A. With himself and me.

Q. Who informed you that he was W. Scott Smith?

A. I think he introduced himself.

Q. Was he the mysterious young man that was trying to blackmail you?

A. Is that question asked seriously?

Q. Yes.

A. I think you know he is not.

Q. Do you mean that Doctor?

A. I do.

Q. How could I know whom you meant?

A. Because I have told you that this man was Scott Smith, and the other man I said I did not know his name.

321 Q. Who introduced you to Scott Smith?

A. I don't remember that I was introduced; I don't know whether he made himself acquainted with me or not, or whether we were introduced.

Q. Where?

A. I knew him first in connection with some difficulty there was in connection with the Associated Press reports from quarantine; that is my impression.

Q. What difficulty?

A. There was a difficulty about their securing their reports; the superintendent of their shipping news reports from quarantine had been changed, and he was offensive, objectionable, and assumed to run the quarantine establishment so far as going aboard of vessels, &c., was concerned, which I did not think was properly the place; and they were boarding in a small boat; the difficulties had occasioned some friction between the quarantine officials and the Associated Press in receiving their despatches, in their accommodations, and Mr. Scott Smith came to me in reference to that matter.

Q. Was that all your acquaintance with him?

A. That was my first acquaintance with him.

Q. State the balance of your acquaintance.

A. After this difficulty had been adjusted my impression is that my acquaintance was commenced by his coming to the board of health in reference to these rags and representing that they were not altogether as they had been represented—they were not gathered before the 1st of January. I said to him, "If you have any knowledge in that matter you can make an affidavit of it," and he did so.

Q. Did you state yesterday in answer to me that your first acquaintance with him was by means of this affidavit?

A. I don't remember that I did.

Q. Did you or not?

A. I don't remember that my words were in relation to that. I did not intend to say it was my first acquaintance with him.

322 Q. Then you did have an acquaintance with him growing out of a trouble between you and the representative of the Associated Press at quarantine?

A. Yes, sir.

Q. And when you met him at the health board he told you he considered those rags were infected?

A. No, he didn't say that.

Q. He told you something, and then you told him to put it in an affidavit?

A. Yes.

Q. Did you ask him what his information was about, whether they were put on board the ship before the 1st of January or not?

A. He told me what his informatin was.

Q. What did he tell you?

A. He told me that the log of the vessel did not correspond to the manifest or to the bills of lading.

Q. Did you ask him where he had seen the log?

A. I don't remember that I did.

Q. Did you look at the log yourself?

A. I did not.

Q. And you assumed to base your official action on the statement of this man who was almost a stranger to you, without taking any steps to verify the correctness of what he stated?

A. No, sir.

Q. What other basis for your official action did you have?

A. The letter of the collector will tell you.

Q. Didn't you quote this affidavit in your letter to the collector?

A. I did.

Q. And didn't you assign that as a reason for your action?

A. No, sir.

Q. In what connection did you quote that affidavit in your letter to the collector?

Objected to; objection overruled; defendants' counsel excepts.

A. I referred to that, and said in connection with it, "But upon this my advice will not be based, but upon sanitary reasons," which I then gave.

Q. Had you any reason to believe that there was any infection in those rags?

323 A. Yes, I had reason to believe so. I had reason to believe there was infection, which I believe is liable to exist in all baled rags. They are gathered promiscuously, and not cleaned.

Q. Did you not know that Dr. Raymond had made a regulation which would prevent the landing of those rags in Brooklyn if there was danger of infection from any cause whatever?

A. I knew he made a regulation that I should certify that they were not from infected ports.

Q. (Repeated.)

A. No, sir.

Q. You did not know such a regulation?

A. I answered that.

Q. You say you didn't understand Dr. Raymond to have made any regulations?

A. I did not say so.

Q. To have made any such regulation as I have described?

A. No, sir; not in that language.

Q. You have heard Dr. Raymond's testimony?

A. Yes.

Q. In issuing that pass did you desire to be understood, and was it your intention in issuing it that while those rags had not come from an infected port they were still of a character likely to spread contagion?

A. I believe that the interior of a bale of rags is liable to communicate infection from all contagious diseases besides cholera. Japan today is more infected with disease than any other country.

Q. Didn't you say a short time ago that you couldn't tell what part of Japan was infected?

A. It didn't make any difference what part. I mean that the aggregate reports show an enormous amount of disease there.

Q. Do you mean to say that it makes any difference as to the danger whether the rags come from an island in which small-pox is raging or from an island fifty miles distant?

A. I can't make a distinction between a small and a large locality.

Q. And your intention was that Dr. Raymond and everybody
324 else should understand that those bales of rags were still subject to contagion?

A. They might be.

Q. And that is all you intended to say?

A. Yes, sir; of course.

Q. And you didn't intend to give him any information that these bales were completely free from any kind of contagion?

A. No, sir.

Q. And that answer you give notwithstanding his testimony here?

A. I do. I knew more about it than he did.

Q. Did you *here* him state that you had informed him that these bales were free from every infection?

A. No, sir.

Q. As a matter of fact did you ever give him any such information?

A. I don't remember to have given him any such information.

Q. Didn't you know as a matter of fact that possibly the doctor would not allow the bales of rags to be landed even for disinfection?

A. Yes.

Q. On that pass?

A. Yes.

Q. What is the reason, as far as you know, that he allowed the rags to come in the Baltic stores upon that pass and excluded them upon this one?

A. A bale of rags that came from a cholera or yellow-fever port is liable to be infected from the atmosphere, from the dock, from the gutters, and from dirt that it may be dragged through from warehouses, while the interior of the bale may be affected with contagion that comes from the persons of patients—of the sick.

Q. You mean to be understood as saying that this pass was only intended to be an intimation to the health commissioners of Brooklyn, that this vessel did not come from a cholera-infected port?

A. That is all.

Q. Why then didn't you as health officer of the port notify him that you had reason to apprehend danger from small-pox?

A. I didn't believe there was in landing the rags, and there is not any danger from landing rags upon a dock—no danger from
325 the interior of the bale. Now the distinction is this, and I have endeavored to impress it upon you. The reason is that bales from a yellow-fever or cholera port are infected or liable to be in their wrappings, and if they are not infected from that cause they are quite as liable to be reeking with contagion in the interior from which there is no harm until they are opened.

Q. Then you assumed to decide what would be harm to the population of Brooklyn, instead of as health officers?

A. I do, and I am so required by him.

Q. By Dr. Raymond?

A. Yes, sir.

Q. Did you hear him swear that he required from you information and proof that there was no danger from any disease before he allowed them to be landed?

A. Substantially that.

Q. And yet in view of this you still say there was no danger from all kinds of contagion from the interior of the bale?

A. I believe so.

Q. Did you ever have any reason to apprehend it?

A. I did.

Q. What was it?

A. I have told you.

Q. What you have told me then is all the reason you had?

A. Yes, sir.

Q. Did you, in your letter to the collector, state that you had any reason to apprehend contagion from these rags?

A. I did not from those rags specifically, but from all rags.

Q. Did you state that these particular rags were liable to become a source of infection?

A. I didn't say so, no more than in a general way; the same liability that other rags had.

Q. Would all your objections to the landing of these rags apply to rags shipped before the 1st of January?

A. Yes, sir.

Q. Just as much as to those shipped afterwards?

A. Yes, sir.

Q. Did you ever write any letter to the collector about any rags except these rags on the Vigilante and the Battaglia?

A. I don't remember now.

326 Q. Do you still believe and do you still declare that it is necessary for the public health that all these rags should be disinfected?

A. I do.

Q. Did you not state in your letter that you did not claim it was necessary for the public health that all rags should be disinfected?

A. I did, with the qualification: "but it was so claimed," which should or should not be that all rags should be disinfected.

Q. And because of that claim, that is the reason why you advised as you did?

A. Yes, sir.

Q. And not that you knew anything whatever about these rags that was injurious?

A. Not more than any other bales of rags that come from an infected country.

Q. You say this letter was not completed for three days?

A. Two or three days I said.

Q. Which was it—two or three days?

A. I don't remember. It may have been two, and it may have been three.

Q. I will read this letter of June 6, 1885. (Reads the letter referred to.) Did you get that letter?

A. I did not get any letter.

Q. Did you get the letter which I have now read to you?

A. I got a copy of a telegram which the collector enclosed to me.

Q. Did you receive the letter containing the words that I have read to you?

Objected to on the ground that the letter should be handed to the witness for his inspection, and that the counsel reads one part of the letter as being the letter and the inquiry, which is not the fact.

The Court: Can you remember whether you got a letter containing such a clause as that?

The Witness: Yes, as a telegram.

Q. You received a telegram, you say?

A. No, I did not say so.

Q. Did you receive a letter containing this announcement?

A. I received a letter containing what purported to be a telegram.

327 Q. I ask you to answer yes or no, if you received a letter containing the following paragraph: "Sir, I have received from the honorable Secretary of the Treasury a telegram dated the 5th instant, in the following words: 'As to rags per Vigilante and Wisenhorn, from Japan, which importers claim were mostly on board prior to January 1st, you are directed to submit all the facts to Health Officer Smith, and be governed by him in the matter.'" Did you receive a letter containing that paragraph from the collector of the port?

A. I did.

Q. And it was in answer to the letter of which I have read the first paragraph, that you wrote this letter of June 6 (handing paper to witness)?

A. Yes, sir.

Q. And did you not know when you wrote this letter that the intention of the letter was to procure the disinfection of these rags?

A. No, sir.

Q. Do you mean to say that you wrote that letter without intending that it should operate to have the rags disinfected?

A. It was to advise the collector, as he requested.

Q. Was it to advise him to have the rags disinfected?

A. It was; that they should not be excepted.

Q. And you knew when you wrote that letter that if they were disinfected they would have to be disinfected in the Baltic stores?

A. I did not know of any other place.

Q. Did you know that if they were disinfected they would have to be disinfected in the Baltic stores?

A. I knew that would be the only place. It was not necessary that they should be disinfected at the Baltic stores under the advice I gave.

Q. Didn't you know that if these rags were disinfected pursuant to that advice, that they would be disinfected in the Baltic stores?

328 Objected to as having been already answered; also that it is impossible for the witness in his answer to include the possibility of the Treasury Department changing its order; objection overruled; defendants' counsel excepts.

A. Not necessarily.

Q. I show you a copy of the letter from the collector, on the 8th of June, in which he speaks of enclosing to the Secretary of the Treasury a letter of yours to him. Did you see it?

A. Yes, sir.

Q. Was that the letter which I have just read of June 6th which he speaks of having enclosed to the Secretary of the Treasury?

A. I think so.

Q. You hadn't any other communication with him on that subject?

A. No, sir.

Q. In relation to the rags on the Battaglia. You had admitted the rags of the Exile, and permitted them to be landed without going through any disinfecting process, hadn't you?

Objected to as immaterial and irrelevant. Objection overruled. Defendants' counsel excepts.

A. Yes, sir.

Q. Didn't you know that the bales of rags belonging to Lockwood & McClintock formed part of the cargo which you had admitted on the Exile?

A. I don't remember that they did.

Q. Weren't you so informed?

A. I don't recollect that I was.

Q. Do you mean to say that you don't recollect of Lockwood & McClintock coming to see you with a consular certificate?

A. I say I don't remember that they did, or that they so stated; I don't deny that they did.

Q. Was there any more reason to apprehend infection in rags that came from Leghorn, Italy, on the Battaglia, than from rags that came on the Exile?

A. No.

Q. Did you make any other regulation for the disinfection of rags of any character than what you have described already?

A. I approved of other processes.

329 Q. You approved of other processes?

A. Yes.

Q. Did you make any regulation providing for the disinfection of rags by any other process than the one we have got here, up to June, 1885?

A. Yes, sir; I had approved the disinfection of rags by other means long before.

Q. The only method of disinfection that was known in this harbor, I understand you to say, was that in the Baltic stores?

A. Yes, sir; so far as this process is concerned.

Q. Any rags disinfected had to be disinfected by that process?

A. I did not know of any other.

Q. Did you make any regulations other than you have described now for the disinfection of old rags?

A. Not in this port.

Q. Had you authority to make regulations in any other port?

A. I approved of them.

Q. (Repeated.)

A. No, sir.

Q. Did you make any regulations in this port?

A. I don't know what you mean by regulations.

Q. Did you make any provision or regulation for the disinfection of rags other than the disinfection by the process carried on in Bartlett & Co.'s stores?

A. I repeat that I approved other processes in this port.

Q. What were they?

A. It was to submit them to sulphur in vacuum.

Q. What do you mean by "vacuum"?

A. That is an exhausting tank; an iron tank hermetically closed, and then the air pumped out and the gas pumped in.

Q. Wasn't that after June, 1885?

A. I think it was.

Q. Now I have to repeat my question. Did you ever make any regulation for the disinfection of rags prior to the month of June, 1885, except the one which provided for their disinfection in Bartlett's stores?

A. Not in this port; no, sir.

330 Q. Did you ever take any steps to inform yourself of the cost of disinfection by this process?

A. By the steam process?

Q. Yes; the one carried on at Bartlett's stores.

A. No, sir.

Q. And you never knew?

A. I have only heard.

Q. When did you hear?

A. The cost of this disinfection to the merchants?

Q. No; I mean to the persons doing it. What did it cost to do it?

A. I heard of it I say.

Q. When?

A. I heard of it at a time when there was a meeting I think before the commissioners of quarantine.

Q. That was in October, 1885, wasn't it?

A. I think it was.

Q. I mean down to June, 1885?

A. No, sir.

Q. Had you taken any steps to inform yourself about that?

A. No, sir.

Q. Had you taken any steps to inform yourself as to how much Bartletts were making by this disinfecting process?

A. I knew what the charge was.

Q. When did you learn that?

A. I learned that early in the disinfection.

Q. How did you learn it?

A. I heard it from merchants, many of them. I heard it from various sources.

Q. That is all you know about it?

A. Yes, sir.

Q. And the merchants came and told you they had to pay five dollars a ton?

A. Yes, sir.

Q. Did you ever have an interview with Mr. Augustine Smith about the admission of these rags?

A. I don't know whether it was about these rags.

Q. Didn't he pay you a visit as the representative of the rag importers and paper merchants in this city?

A. I don't recollect that he did as a representative.

Q. Did Mr. Smith ever say to you that the wholesale rag importers of this country would be entirely willing to have the rags
331 from infected ports entirely excluded, and did he offer to co-operate with you in having such a regulation made?

Objected to as incompetent, immaterial and irrelevant. Objection overruled. Defendants' counsel excepts.

A. He may have done so. I would not say that he did not. I have not a distinct recollection of that. It is quite likely that he may have said so.

Q. Did the chamber of commerce make that suggestion to you at any time?

A. I don't remember what their resolution was to me.

Q. Well, that is a pretty important body in this port with which you are connected, isn't it?

A. Yes, sir.

Mr. Prentice: I ask that the question be made definite as to time.

The Court: Well, the witness says he does not recollect.

Q. Did you know that on June 4, 1885, action had been taken by the chamber of commerce, by resolution, upon the question of admittings rags from uninfected ports?

Objected to on the ground that the question is not addressed to the knowledge of the witness previous to the time when the alleged conspiracy took place.

Objection overruled. Defendants' counsel excepts.

A. I cannot swear without seeing the resolution.

Q. Can't you remember whether the chamber of commerce took any action upon the subject?

A. The chamber of commerce passed two resolutions.

Q. Was one of them about the time this dispute was going on concerning the rags on board the Vigilante?

A. It was in the early part of June, 1885.

332 Q. That you remember?

A. Yes, sir.

Q. Now, I read you the resolution:

"Resolved, That this chamber is of the opinion that the proper disinfection at the place of shipment will cause the removal of all germs of disease and unhealthy consequences from the importation of rags into this country, and that the chamber would recommend such action on the part of our Government as will require such disinfection, at the port of shipment, of every invoice of rags, and that the same shall be accompanied by the certificate of the United States consul, setting forth the fact; unless, however, such invoice is accompanied by a certificate of the United States consul that the rags were all gathered in a country free from contagious or infectious diseases."

Same objection; also as irrelevant, incompetent and immaterial. Objection overruled. Defendants' counsel excepts.

Q. Did you, at or about the 4th of June, 1885, know that the chamber of commerce had adopted that resolution? Do you remember that?

A. I do.

Q. Was not the certificate presented to you at or about June 5th or 6th by Mr. McClintock, precisely such a certificate as is mentioned in that resolution?

A. Substantially that.

Q. With that before your mind, I ask you again the question, if when the Exile rags were here in this port, you didn't state to Mr. McClintock that if he would produce such a certificate, you would permit the rags to come in?

A. I told him under the same conditions.

Q. What conditions?

A. Under the same conditions that those rags came in.

333 Q. You mean to say that you would allow the rags on the Battaglia to come under the same conditions as the Exile?

A. If the same circumstances existed.

Q. What circumstances that were different existed?

Objected to; objection overruled; defendants' counsel excepts.

A. When the Battaglia arrived, the circumstances were that the health officer received those certificates, those evidences which the consular certificates afforded. The certificates of the consuls in the absence of other evidence, have been the rule in relation to rags from an infected port. The conditions of the public mind, the apprehension, the subsequent conclusions of the conference at the Fifth Avenue hotel, of which I was a member, left me to feel a responsibility in adopting its conclusions that I did not feel—and indeed a necessity—when the Exile's cargo arrived.

Q. You now state that on account of the public mind, and the proceedings of the Fifth Avenue Hotel conference, of which you were a member, you had apprehensions as to the public safety when the Battaglia arrived which did not exist when the Exile arrived?

A. I did not say that.

Q. Let us hear your answer again, then.

A. I said that I felt a responsibility to carry out the conclusions of that conference when the Battaglia arrived that I had not felt when the Exile arrived.

Q. This Fifth Avenue conference occurred in April, 1885, didn't it?

A. Yes, sir.

Q. When did the Exile arrive?

A. I think the 11th of April.

Q. When were those rags permitted to be landed?

A. I don't remember when.

Q. What occurred between that and the 1st or 2d of June that caused you to have a sense of responsibility that you didn't have in April?

334 A. I told you that I felt that I had a responsibility to carry out the conclusions of that conference in which the health authorities of this northern Atlantic seaboard had concurred.

Q. The conference of April 23d, at the Fifth Avenue hotel, you mean?

A. Yes, sir.

Q. Was there the slightest reference made to this cargo of the Exile in that conference?

A. No, sir.

Q. As to the cargo of rags?

A. No, sir.

Q. You knew there was some cargo?

A. I don't remember that I did.

Q. What particular facts were developed at that conference which caused you to look with suspicion on the rags of the Battaglia after you had passed the rags of the Exile?

A. The same suspicion I had with all rags, that the interior of the bale was infected or contained contagion.

Q. Why didn't that operate to prevent the rags on the Exile from coming in?

A. I say that I had passed them hitherto under the consular certificate, but I felt that the responsibility devolved on me in consequence of the conclusions of the conference, of which I was a member, which required that I should conform to its conclusions.

Q. Did you know of any legal effect or power that that conference had upon you?

A. No legal effect.

Q. But it gave you a sense of responsibility that you didn't have on the 11th of April?

A. Yes; an increased sense of responsibility.

Q. So that you felt that it was necessary to be more strict?

A. To carry out the conclusions of the conference.

Q. Didn't you know as much about the danger of disease before the 11th of April as you did after?

A. I think so.

Q. And yet you say there was something occurred at that conference which gave you reason to apprehend danger from rags after the conference adjourned that did not exist before?

—. I did not say so.

335 Q. What was there about these rags that caused you to fear infection from them which did not exist when the Exile arrived?

A. I say I had some apprehension; I felt that the rags were liable to be infected, and that I should aid in carrying out the conclusions of the health authorities.

Q. Did you feel that when the Exile came up?

A. I was not supported by the authority to do it.

Q. What authority did these strangers from other parts of the country impart to you?

A. No authority; but they gave a moral support to me in carrying out any such measures.

Q. As a matter of fact didn't you require some additional papers on the Battaglia before you would consent to land her?

A. I don't know that I did.

Q. Didn't you after this conference adjourned, and after the moral support had come to you, require the plaintiffs to produce some additional papers with the Battaglia rags which were not required with the rags on board the Exile?

A. I don't remember any.

Q. Assuming that you had exacted an additional paper from those importers, would that also be attributable to the moral support which you obtained from the Fifth Avenue Hotel conference?

A. Only so far as it related to the conclusions of that conference.

Q. This conference was gotten up by yourself?

A. It was solicited by me.

Q. And you attribute the change in your action entirely to the fact that that conference gave you a moral support?

A. No, sir; that it had formulated certain regulations which I felt bound to carry out.

Q. The conference had formulated regulations?

A. Yes, sir; for all ports.

Q. Didn't you say that no port but Boston adopted them?

A. I stated that all concurred.

Q. Did you not say, and is it not a fact, that no port ever adopted any such regulations except Boston?

A. I thing Baltimore did.

336 Q. I show you the certificate of the United States consul at Leghorn. Do you know where Leghorn is?

A. I think I do.

Q. Is it a Mediterranean or an Adriatic port?

A. It is a Mediterranean port.

Q. Are you quite sure about that?

A. Yes, sir; I told you it was a Mediterranean port.

Q. That is the consular certificate in regard to the rags that came on board the Battaglia, or one of them?

A. Yes, sir.

Q. What other document besides that consular certificate did the rags on the Exile have?

Objected to as immaterial, incompetent and irrelevant; and as calling for the contents of a paper not in evidence. Objection overruled. Defendants' counsel excepts.

A. Unless it was the certificate of the shipper, I don't remember.

Q. Was there any certificate from the shipper in the case of the Exile?

Same objection, ruling and exception.

A. I don't remember.

Q. Didn't you, in the interview between Lockwood and McClintock and yourself after the Exile rags had been delivered, tell Mr. McClintock that you would require with that part of the cargo that would arrive on the Battaglia, a certificate of the shipper, certified to by the American consul?

A. I have told you that I don't remember that the cargo of the Battaglia was referred to as a part of the cargo.

Q. Do you remember such a conversation?

A. I remember a conversation, but not that part of it as referring to a part of the cargo of the same lot of rags.

Q. Didn't you, as a matter of fact, tell Messrs. Lockwood and McClintock, before the arrival of the Battaglia, that you would require, in addition to the consular certificate which I have
337 just shown you, a certificate of the shipper and a certificate
from the consul that the shipper was a man of veracity and character?

Objected to. Objection overruled. Defendants' counsel excepts.

A. I don't remember any such words in that conversation. I have to say, however, that that was a rule which I had established.

Q. Just answer my question. Did you say that to Mr. McClintock?

A. I don't remember that I did.

Q. Did you say to anybody that you would need such a certificate?

A. To a great many.

Q. Is the certificate that I now show you from the United States consul at Leghorn, such a certificate as you stated you would require in order to pass rags coming from ports in Italy (handing paper to witness)?

A. Such a certificate accompanied by the consular certificates were required, but I don't remember what time the regulation was made.

Q. Did you on August 9, 1884, make a regulation governing shippers who imported rags, and which required such a certificate as the one I now show you?

A. I don't remember it.

Q. This is plaintiffs' Exhibit E. I show you the written endorsement on the back of it, which appears to be your printed regulations, and I ask you if that is in your handwriting?

A. It is in my clerk's handwriting.

Q. Whose is the signature?

A. My clerk's.

Q. Put on by your authority, isn't it?

A. Yes, sir.

Plaintiffs' counsel reads the exhibit and the endorsement thereon.

Q. Is this the certificate provided for by that regulation?

A. I think so.

Q. Such a certificate was presented to you on the arrival of the Battaglia?

A. I think so.

338 Q. And still you ordered the Battaglia to be disinfected?

A. I don't say I ordered her to be disinfected.

Q. Did you not write upon the little red or yellow pass that she was to be taken to Robbin's reef in case she could not get admission for disinfection?

A. I don't remember the form, but I think it is the regular certificate to be disinfected.

Q. And you know that the effect of that certificate would be to cause her cargo to be disinfected so far as rags were concerned. Did you not, notwithstanding this certificate, and the consular certificate and the manner in which you directed the rags that arrived by the Exile, when the Battaglia came to the port, by that certificate, direct her cargo to be taken to Robbin's reef for disinfection? It was a certificate of discharge.

The Court: Can you answer the question, yes or no?

Objected to. Objection overruled. Defendants' counsel excepts.

A. I know the result of that would be that they were to be disinfected.

Q. And you knew that Mr. Bartlett or the Paper Stock Disinfecting Company would do the disinfecting down there?

A. I did not know that Mr. Bartlett had anything to do with it.

Q. You knew the Paper Stock Disinfecting Company had?

A. I knew that that was the only process for disinfecting.

Q. Doctor, you have got an appropriation from the State for fumigation and disinfection purposes, haven't you?

A. Not that I know of.

Q. Didn't you ever get an appropriation from the State for that purpose?

A. No, sir.

Q. Didn't you ever apply for it?

A. No, sir.

Q. Made no application to the State for that purpose?

A. No, sir.

Q. You do your own fumigation, and then collect from the shippers for the fumigation?

A. Yes, sir.

339 Redirect examination by defendants' counsel:

Q. Does fumigation of the ship necessarily disinfect rags which are infected?

A. No, sir; not at all; not the interior of the rags.

Q. After the experiment at Kelsey's stores where the three tubes were used and when the pathogenic germs were inserted and Dr. Sternberg made a report upon them, did he report to you that the germs were killed by the process?

A. He did by steam, but not by the sulphur process. In other words, the germs of disease were killed by the No. 4 process.

Q. Did Dr. Sternberg also report that such germs were not killed by any other process?

A. No other process was satisfactory. By other processes the germs were not all killed.

Q. As you have been examined in geography, can you tell me how the width of Japan compares with the width of the United States between San Francisco and New York?

A. Oh, it is very much smaller. When the Vigilant was sent up under a quarantine pass I knew that necessarily the cargo must go to the Baltic stores for disinfection under the Government order, and when the Battaglia's cargo was sent up, the Treasury Department order having been changed, as it was on the 10th of June, I knew that that would go to Robbin's reef for disinfection. My opinion has not changed under the cross-examination of Mr. Cochran as to the necessity for the disinfection of rags in order to protect the health of the port of New York, no matter where they come from, nor whether they come from an infected port or not.

Redirect examination suspended.

340 R. Morimura, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

By defendants' counsel:

I am a native of Japan. I have resided in this country over 10 years. I was last in Japan last year.

Q. What are the facts within your knowledge as to the existence of cholera in Japan within the last six or seven years?

Plaintiffs' counsel: I would like to interrogate the witness first before he answers that question.

(By plaintiffs' counsel:)

Q. Have you been continuously in Japan during the last seven years?

A. I have made a trip there every other year. I have made three or four trips to Japan during the last seven years. I stayed there each time about eight months or nine months, or perhaps one year. I was in all parts of Japan. I should know a case of cholera if I saw it? I have seen one in Tokio last year and year before too.

By the Court:

Q. In 1884; were you in Japan that year?

A. Yes.

Q. Do you know as to the condition of health there; whether cholera prevailed there?

A. I think it was 1882 when we had a severe case of cholera in Japan.

Q. Were there many cases at that time?

A. Yes, many. The summer of 1886 was the worst.

Q. Was there any cholera there in 1884?

A. There is more or less cholera every year in that country.

Q. Does that occur in the winter and in the summer?

A. From the summer towards the fall.

341 By defendants' counsel:

Q. Was there small-pox in Japan in the last two or three years?

A. There is more or less every year, but not so severe as it used to be years ago.

Q. Do you know anything about the extent of the districts through which they gather rags for shipment?

The Court: Do you know anything about the gathering of rags in Japan?

The Witness: Yes, I do, a little.

To plaintiffs' counsel: I have never exported any rags nor caused any rags to be gathered. When I say I know a little about the gathering of rags I mean that I was told by a friend how they were gathered. I don't know anything about it except that.

By defendants' counsel:

Q. Have you not seen them gathered?

A. I have seen them when they were shipped, but I have never seen them gathered.

Cross-examination by plaintiffs' counsel:

About the 1st of January, 1885, I was in Japan. I had been there about three weeks.

Q. Think again and see if, on first of January, 1885, you were not in New York, and if you didn't buy goods from this gentleman (Mr. Meyer) just about that time?

A. Yes; I meant 1886 I was there.

Q. Then on the 1st of January, 1885, you were here?

A. Yes.

Q. And you had been for quite awhile before that?

A. Yes, about a year.

Q. And you didn't know anything about what was going on in Japan at that time?

A. No, not while I was there.

Q. And you never were in the rag business?

A. No, sir.

342 Q. You deal in fans and fancy articles?

A. Yes.

Redirect examination by defendants' counsel:

My business is in Japanese goods, and I have extensive correspondence with Japan. The early part of 1883 I was in this country, and then I went to Japan. I go to Japan about every other year.

William M. Smith, recalled, further redirect examination.

By defendants' counsel:

Q. Did I understand you this morning to testify that you had heard of two resolutions of the chamber of commerce?

A. I did so testify.

Q. The counsel for the plaintiffs read to you a resolution apparently of a meeting of June 4, 1885. I ask you you when you first had notice of that resolution or were aware of its adoption.

A. In May or June of 1886.

Q. The other resolution to which you referred; I will ask whether it was the one now shown you in this report of a special committee in 1886.

A. This was the resolution that I supposed the counsel asked me if I knew about. I referred to two resolutions, but that is the one I supposed he read.

Defendants' counsel: If the other resolution was admitted in evidence, I ask now that this resolution of June 1, 1886, be also admitted.

Plaintiffs' counsel: It was put in evidence, because I incorporated it in my questions. We will admit the whole thing in evidence.

The Court: You may read it.

Defendants' counsel (reading): I. That invoices of rags accompanied by a certificate of the United States consul that they were all
gathered in a country which at that time was, and for at
343 least six months immediately preceding had been, free from
cholera, or other contagious or infectious epedemic diseases,
should not be required to be disinfected either before shipment or on arrival. In the absence of such certificate, rags coming from a port or country claimed to be free from such diseases should be disinfected on arrival.

II. That rags gathered in any port or country where such diseases then were, or had been prevalent at any time within six months immediately preceding the shipment thereof, and whether such rags are exported direct, or via any other port or country, and whether landed or stored therein, or transhipped overside to another vessel for re-export should be prohibited from being landed in the United States so long as any prohibitory order, published by the Government or health officers, remains in force; nor when the order is rescinded should such rags be landed until disinfected on arrival.

III. That quarantine regulations in relation to rags or other merchandise, or the disinfection thereof, should be uniform at all ports of entry in the United States, and should be under the sole control and management of the United States Government.

Q. You testified yesterday, upon cross-examination, in reference to communications between yourself and Dr. Hamilton, surgeon general of the marine hospital service?

A. I did, and the inference that I drew in respect to the notice to the Government of the test that had been made prior to the date of that correspondence. I have since yesterday found part of that correspondence and have refreshed my recollection relating to it. 344 I have found my letter to the surgeon general, in reply to his letter requesting my opinion as to the processes which were witnessed at Centre street; that is, I have found a press copy of my letter. I searched for Dr. Hamilton's letter, but I did not find it. I have the press copy of my letter now in my hand; its date is November 10th, 1884. Having refreshed my recollection, I now state that the test in Centre street at which Dr. Hamilton and I were present was made the 29th of October, 1884.

Q. You were asked this morning if you communicated the results of the Fifth Avenue conference to the Secretary of the Treasury, and also for what reasons you believed those conclusions to be important in relation to the official action of quarantine authorities. Do you know whether the result of that conference was communicated to the Secretary of the Treasury pursuant to a request from him?

A. I communicated those conclusions to the Secretary of the Treasury at his request. This is the letter, dated May 4th, 1885. (Handing defendants' counsel Exhibit 13.)

Defendants' counsel reads to the jury Defendants' Exhibit No. 13.

(Witness continuing:) That letter was after the arrival of the Exile and before the arrival of the Battaglia.

Q. Had you any knowledge whether or not the results of that conference, and especially this part to which I now direct your attention, was deemed of the importance and had consideration by the Government at that time, namely: that if disinfection be done abroad it be required that either the rags be boiled for not less than 30 minutes and dried before baling, or treated with superheated steam for not less than eight minutes in such a manner as to be heated to or above 212 degrees Fahrenheit; that inspectors should be appointed by the Government having control of the epidemic fund to certify to the sufficiency of the disinfection of rags 345 according to the above rules, and that consular endorsement be added thereto; that in the absence of such certificate and endorsement all rags should be disinfected at the port of entry?

A. I have reason to believe that that had been communicated, and it was under consideration by the Government. The Battaglia had no such certificate, as required under those conclusions. I do not remember the date when I was notified first of the appointment of rag inspectors by the United States Government in furtherance of the method suggested by that conference and under the conclusion now read to me. Here is an amended list of inspectors; July 13th is the date of it.

Defendants' counsel reads to the jury Defendants' Exhibit No. 26.

Q. Were you aware of that order of the collector?
A. I was.

Recross-examination by plaintiffs' counsel:

Q. You have said in reply to Mr. Prentice that the words "rags excepted," on the pass that you issued at quarantine, meant to except the rags from the general certificate and allow the ship to pass. Is that correct?
A. That is correct.
Q. You are a member of the health board of New York city *ex officio?*
A. Yes, sir.
Q. And you know what the regulations of that health board are?
A. Yes, sir.
Q. Don't you know the health board of the city of New York requires from importers of rags a bond conditioned that they shall not be opened within the city of New York as a condition of issuing its permit for landing?
A. Yes, sir.
Q. And you know that the words "rags excepted" referred to that action of the board, and meant that the rags are not passed until that bond is given to the health board?
A. Not all that.
346 Q. Does it mean that to any extent?
A. No, sir.
Q. You now desire to be understood that the words "rags excepted" had no reference whatever to the health board of New York?
A. Only so far as their action is concerned in giving a permit for their transfer for distribution to other localities.
Q. Does it refer to it to any extent?
A. It does.
Q. And it has always had that meaning, has it?
A. I think it has.
Q. And you are a member of that board of health?
A. I am.
Q. Did you ever make any application to the board of health to have the permit issued by that body to Lockwood & McClintock for the landing of the rags on the Vigilante revoked?
A. Not to have it revoked. No, I don't think so.

Q. Have you any recollection on the subject?

A. I have no recollection of it.

Q. Have you recollection of making any application, suggestion, or anything else in the hearing of members of that board calculated, or in your mind intended, to cause a revocation of that permit?

A. I stated to them, I think, when this matter was under discussion at the board that the rags were not to be distributed, or not to be discharged for distribution.

Q. You stated that to them?

A. I think so.

Q. Did you state that to them as a regulation of your own or as a regulation that you wanted them to adopt?

A. That was the understanding; not with reference to their being discharged on the dock merely, but that they should not give them a pass for distribution to localities where there was no quarantine jurisdiction.

Q. You knew they had given them such a permit, didn't you?

A. I don't think so. They had given a permit simply to discharge.

347 Q. Did the board of health give any other permit than one to discharge?

A. No, sir; there was one general permit.

Q. Don't you know that they had given that permit to the Vigilante?

A. My impression is they had.

Q. In the course of your studies and researches as a sanitarian, have you ascertained, or endeavored to ascertain to any extent, the regulations that are made by other countries in order to secure the health of seaboard towns?

A. Yes, sir.

Q. Have you paid any attention to the English regulations?

A. Yes, sir.

Q. Was there any quarantine established in England for the last nine or ten years?

A. Yes, sir.

Q. Any disinfecting process of old rags?

A. I don't think they have any disinfecting process.

Q. Did you ever know of any quarantine in England for years past that prevented the free importation of goods from other countries?

A. Yes; there has been a prohibition of the importation of rags.

Q. From infected ports?

A. From all ports.

Q. A total prohibition?

A. Yes, sir.

Q. Do you mean to say that there has been a total prohibition of the importation of rags into England?

A. From continental countries when they were infected.

Q. I am talking about ports not infected?

A. Ah; not that I know of; no, sir.

Q. Did you hear of a case of cholera in England lately?

A. No, sir.

Q. It has been a good many years since there has been a case of cholera in England?

A. Yes, sir; not since the Asiatic cholera.

Q. You don't mean to say that disinfection prevented cholera morbus, do you?

A. I don't refer to anything else.

Q. Is not the importation of rags into Great Britain much greater than here?

A. I don't know to what extent.

348 Q. In the course of your researches didn't you endeavor to ascertain?

A. I know that they have large importations, but I don't know to what extent.

Q. In the course of your researches you didn't ascertain?

A. No, sir.

Q. Do you remember the small-pox epidemic in Montreal quite recently?

A. Yes, sir.

Q. You have stated that you had reason to believe that the proceedings of the conference which you solicited at the Fifth Avenue hotel was before the Treasury Department at the time that letter was written to you. What was your reason for believing that. I refer to the letter of May 4th, Defendants' Exhibit 13. Did you have any reason to believe that the Treasury Department was considering that at the time the Battaglia arrived?

A. I think so.

Q. Didn't you say you did, in answer to Mr. Prentice?

A. I think I did.

Q. Did you?

A. I don't remember.

Q. As a matter of fact did you have any reason for believing, at the time the Battaglia arrived, that that question was before the Treasury Department?

A. Yes, sir; the letter of the Secretary of the Treasury himself, asking for those conclusions.

Q. And that was all you had?

A. Yes.

Q. You had no knowledge that the Secretary of the Treasury contemplated any new regulations?

A. Only so far as to know what they were.

Q. And he asked you to send them to him?

A. Yes.

Q. That was the extent of your information?

A. At that time.

Q. Or at any subsequent time; down to June 10th. The next information you had was the letter of the Secretary of June 10th, revoking all these regulations?

A. Yes, sir.

349 Q. You said that you misapprehended my question, and you thought I referred to a resolution adopted by the chamber of commerce, in June, 1886?

A. I did.

Q. Didn't you hear me read the resolution?

A. I did; but it was so long, and the language is so similar to that adopted in 1885, that I thought it was the same.

Q. You knew that the pamphlet containing the proceedings in relation to disinfection, in June, 1886, was published?

A. I didn't know that it was.

Q. Did you ever see that before now?

A. I think so; but I didn't recognize the pamphlet. I say that the language was so similar to that published in 1885, that I didn't recognize the difference. I supposed you asked me if I knew of the resolutions of 1886.

Q. Were you not personally before the chamber of commerce, on the subject-matter which led to the report being adopted?

A. In 1886?

Q. Were you not before them prior to the adoption of the resolution of 1885?

A. No, sir.

Q. And you say you were in doubt and believed when I read to you the report adopted in June, 1885, that it was the report of June, 1886?

A. I do.

Q. Notwithstanding the fact that I read it to you?

A. I do.

Q. This letter of June 11th, 1885, to the collector, relating to the Battaglia, directs the collector to submit the question to you?

A. Yes, sir.

Q. Did you answer that letter of the collector, or was anything referred to you in pursuance of it?

A. I don't remember any reply.

Q. Was that letter ever sent to you, or were its contents ever communicated to you?

A. I don't remember.

Q. Did you ever make any reports to the collector on the subject of the Battaglia's rags?

A. I don't think I did.

350 Mr. Prentice: I desire to ask that this letter of June 11th, 1885, which is Fairchild Exhibit No. 22, be now marked as an exhibit in this case.

The letter is marked Defendants' Exhibit 40, of this date.

Alfred L. Carroll, having duly affirmed, testified as follows:

By defendants' counsel:

I am a physician, and have been engaged in the practice of my profession for thirty-odd years. I have given particular attention to sanitary matters, and the scientific subject and studies of biology connected with it. My official position in April, 1885, was the secretaryship of the New York State board of health. I was present at a conference of sanitary authorities held at the Fifth Avenue hotel, April 23, 1885. It was an informal conference and not organized by the formal appointment of a secretary. I acted as secretary. I signed this report of the conference, and the conclusions, of which a copy is annexed to Mr. Fairchild's deposition as Exhibit 29, now shown me.

Q. Had you made inquiries and formed your opinions as a sanitary officer and as one occupying an official position in respect to the dangers from imported old rags in 1855?

A. I had no personal inquiries. My opinion was based upon reading and reports of different kinds. I refer to the authorities which would be consulted by an expert or a scientific inquirer on such a subject. I have endeavored, as far as possible, to familiarize myself with all that was going on in the scientific world. It was my opinion that there were dangers from imported old rags, and in the course of this conference I communicated such views to Dr. Smith and other members of that conference then at the Fifth Avenue hotel.

351 Q. And how, did I understand you to say, in respect to the general custom, was there danger or not?

A. I believed rags to be dangerous.

Q. From what source came the danger and what preventative measures, in your opinion, were necessary?

A. Any textile fabric may convey the contagia of the infectious diseases, and, in my judgment, all such textile fabric should be disinfected.

Q. Did you, in that conference with the other members, pay any special attention to the official assurance of the process of disinfection necessary to obviate these dangers?

A. That was discussed very fully by most of the gentlemen present at that conference. This was a part of the result arrived at by the others, and by me, in connection with others, at this conference: "That in view of the danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at the place of departure or on arrival here. That if such disinfection be done abroad, it be required that either the rags be boiled for not less than thirty minutes and dried before baling, or treated with superheated steam for not less than eight minutes, and in such manner as to be heated to or above 212 degrees Fahrenheit in every part. That inspectors should be appointed (by the department having control of the epidemic fund) to certify to the sufficiency of disinfection of rags according to the above rules, and that a similar endorsement be added to such certificate. That *is* the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry." At the suggestion of Dr. Durgin, president of the Boston board of health, the following addition to the above conclusions is accepted by the parties before named, to wit, that in the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry, except when accompanied by satisfactory evidence in writing that
352 they have not been collected or baled in any district or place
contiguous thereto in which cholera, yellow fever, small-pox,

typhus fever, scarlet fever, diptheria or the plague has prevailed during any part of the twelve months last preceding said collection." There was no difference of opinion upon that subject among sanitary authorities, so far as I knew at the time; there was none expressed at that conference. I did not attend the experiment with a process of disinfection by superheated steam in 1885; nor in 1884.

Cross-examination by plaintiffs' counsel:

Q. What did you know about the process of superheated steam in relation to disinfecting?

A. Simply reports of experiments which several biologists in different parts of the world had been making on the destruction of bacteria germs generally.

Q. Did you know there was only one process of treating rags with superheated steam in this country at the time of that conference?

A. I had heard of this hollow cork-screw, which was the only thing I knew of. I don't know that anybody told me. I saw a reference to it in medical journals, I think.

Q. You approved of the report, of a resolution or conclusion which practically resulted in the application of this process to all rags coming into this county, didn't you?

A. I approved of the use of superheated steam.

Q. What did you know of the use of superheated steam when you approved of that finding?

A. I knew nothing of this process.

Q. Did you know of any other process by which superheated steam could have gotten into the rags?

A. No, sir.

Q. When you approved of this conclusion you were approving of a process of which you knew nothing?

A. I had no intention of committing myself to any particular instrument.

353 Q. You signed these conclusions or resolutions?

A. Yes, sir.

Q. And didn't you know that it was to be for the government of the quarantine station?

A. It was optional with Dr. Smith to adopt it or not.

Q. How do you know; did Dr. Smith say so?

A. We had no authority in the matter.

Q. Did Dr. Smith remind you of that fact?

A. No, sir.

Q. Did Dr. Smith tell you when he brought you together that he wanted you to formulate resolutions or conclusions for the purpose of giving him what he described this morning as moral support?

A. No, sir.

Q. Did Dr. Smith tell you why he brought you there anyhow?

A. As far as I was invited, it was to a conference to consult in regard to measures to be adopted at quarantine—what measures were advisable.

Q. And one of the measures was that superheated steam should be injected into the rags. Did you know at the time you put your name to that report that there was any process in existence that would heat by means of superheated steam bales of rags to 212 degrees?

A. May I call your attention to that fact that the rags were to be treated abroad?

Q. There is another part that requires that if this is not done abroad then it should be done here?

A. Yes, sir.

Q. And when you signed this did you intend to recommend to the authorities of this country that superheated steam should be applied to all rags in the bale imported into this country?

A. I know nothing about the efficacy of this machine, therefore I would not have committed myself particularly to that; but that superheated steam was an efficient disinfectant. That was our opinion.

354 Q. Did anybody tell you about the result that could be achieved by this machine that we have been discussing there?

A. No one had said anything to me about it.

Q. Did you inquire from Dr. Smith about it?

A. No, sir.

Q. In this report which you saw in the papers was there any mention made of this experiment in which Dr. Smith and Dr. Sternberg participated?

A. There were several different mentions of that in different journals.

Q. How did you intend that superheated steam should be applied to rags when you signed that report?

A. I had no intention at all.

Q. You were not recommending to the Government the adoption of a system which you couldn't tell whether it could be applied or not?

A. Superheated steam could be applied.

Q. How?

A. By breaking the bales.

Q. How would it be applied then?

A. By passing a current of steam through them.

Q. Through each rag?

A. Through the rags loosely.

Q. How would you pass it except through the hollow corkscrew; did you know of any other means?

A. No.

Q. So when you recommended that didn't you practically recommend that this machine which we know here as the Parker machine should be applied to all bales of rags that came into this port?

A. If they were not properly disinfected abroad. Let me qualify that: I knew absolutely nothing of that particular machine or its efficacy at that time.

Q. Who invited you there?

A. I think Dr. Smith.

Q. Who called the meeting to order?

A. There was no official calling to order.

Q. Who presided?

A. There was no presiding officer. It was an informal meeting.

355 Q. Describe to us how much of a conference it was. We have had it called a conference here. Now, who started the talking there?

A. I think Dr. Smith was the first person who spoke.

Q. Tell us what he said.

A. The substance was that he wished to consult concerning measures to be adopted in quarantine in view of the possible danger of cholera.

Q. Of cholera?

A. Yes, sir.

Q. Then it only referred to cholera—that particular discussion?

A. No, sir. The first few clauses of these conclusions, you will find, refer more particularly to cholera.

Q. Who requested you to take down those proceedings?

A. I don't remember that any one requested me. I had some slips of paper in my pocket, and I jotted down the matters as they were talked of.

Q. And did you write them out afterwards?

A. I did, and I had type-writer copies made, and I sent a copy to each of the gentleman who had been present there to see if they related his views correctly.

Q. And did each one sign the copy that you sent to him?

A. I don't know.

Q. Can't you tell us how you got all the signatures to one copy?

A. That I can't say. They were sent I presume by each of these gentlemen to Dr. Smith. One or two were sent to me, and I immediately forwarded them to Dr. Smith.

Q. Did you ever know of a case of Asiatic cholera being communicated by rags?

A. Not personally.

Q. You know there is a vast amount of rags imported into London, don't you?

A. I believe there is.

Q. Have you, in order to guard yourself as a sanatarian, taken pains to ascertain in what proportion rags are imported into the various great shipping cities of the world?

A. I have not.

356 Redirect examination by defendants' counsel:

Q. In your reading have you discovered the ports of the communication of Asiatic cholera or cholera, by rags?

A. It is alleged so.

Q. Is it accepted as a fact?

A. I think it is.

Recross by plaintiff's counsel:

Q. Why do you say that? What book do you base that answer on?

A. The various sanitary congresses and conferences which have been held, and reports from various sources. There have been very few.

Q. Very few cases of cholera communicated by rags. Is that what you mean to say?

A. Yes, sir.

MARTIN L. BERRY, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

By defendants' counsel:

I have been connected with E. B. Bartlett & Company in business at some time. I was the person who was appointed by the Paper Stock Disinfecting Company, or by E. B. Bartlett & Company, at the disinfecting place in the Baltic stores to receipt for goods received for disinfection.

Q. Will you look at the receipts now shown you and state whether your signature appears upon them, and whether the contents stated therein are true (handing seven papers to the witness)?

A. Yes, sir.

Defendants' counsel puts the papers referred to in evidence, and the same are marked Defendants' Exhibits 41 to 47 inclusive, of this date.

Defendants' counsel: I will state that the aggregate of these is 6,139 bales. On June 19th, there were two 1,707 bales.

357 Witness continuing: These receipts were signed on their respective dates. That was the day the bales were actually delivered from the lighters to our storehouse. They were received, and the goods went into the Baltic stores. On June 13th, the work of disinfection commenced on the rags which were sent in on that day. It was continued up to 12 o'clock, the 13th being Saturday. The work was recommenced Monday morning, I don't remember what hour, and continued right straight along. There was no time when the machine was not working up to the time of the delivery of the last lot of rags, namely, on June 19th, Sundays excepted.

By the Court:

Q. How many bales did you do a day?

A. That I don't know.

Q. How long did it take to complete all this work?

A. I cannot tell. I had nothing to do with disinfecting it.

Cross-examination by plaintiffs' counsel:

Q. Do you know whether they were working on this disinfection continuously during the period covered by these receipts?

A. I do by my men.

Q. Did you see it being done?

A. I did, off and on. I saw the stores opened there for the business.

Q. And you therefore inferred that the disinfection was going on?

A. Yes, sir.

Q. Was the work of disinfection suspended for several days while an injunction was issued against the disinfecting business?

A. I think not.

Q. You don't think they suspended at all during any period?

A. It might be for a day, or something, where the custom-house officer stopped, because he was taken sick.

358 Q. And, while the sickness of the custom-house officer may have stopped it, you are pretty sure that no injunction stopped it?

A. I don't know of any injunction. The custom-house officer's sickness was caused on account of the rags, for a few days or hours—whatever it was.

On motion of plaintiffs' counsel the last sentence of the answer is stricken out as not responsive, to which defendants' counsel excepts.

Q. Will you swear that those receipts were written on the day they bear date. I repeat my question. Are you prepared to swear that the disinfection of these rags was not suspended at any time by reason of any injunction issued from any of the courts?

A. Not that I am aware of.

Q. But you would have been aware of it?

A. During the disinfection?

Q. Yes.

A. I don't know that there was any injunction during the disinfection.

Q. Would you have been aware of a stopping of the disinfection process?

A. I presume I would.

Q. Are you prepared to swear that the disinfection of the rags was not suspended?

A. I was not aware that there was any injunction.

Q. Will you swear that the disinfection of these rags was not suspended for any time except for the sickness of the custom-house officer?

A. That is all.

Q. How long did that sickness last?

A. I don't remember.

Q. Was it over a day?

A. I can't tell you.

Q. Was it two days?

A. It might have been.

Q. Was it three days?

A. I don't think it was.

Q. There were six thousand bales?

A. Whatever the receipts call for.

Q. Were they all disinfected between June 13th and 19th?

A. The receipts will show.

Q. How many could you disinfect at one time?

A. I didn't disinfect them and don't know.

Q. Did you see them disinfected?

A. I have seen some of them. I have been in the disin-
359 fecting-room and seen them do five bales at a time, and some-
times four. I have seen this process. I was in court when
it was described. We had four or five machines there at that time for disinfection. I don't know which, I had nothing to — with it myself. I can't tell you anything more than I have already described as to the way in which it was done.

Q. Can you tell how many screws were put in each of those bales?

A. I have seen three and I have seen five.

Q. Five screws put into one bale?

A. Yes, sir.

Q. Are you the gentleman to whom this process was afterwards assigned?

A. No, sir.

FRANKLIN D. LOOMIS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

By defendants' counsel:

I am a practical engineer, and I was employed by the Paper Stock Disinfecting Company in the year 1884. I had charge of the disinfecting process under what has been called the Parker system or the Blackman system. I don't remember exactly when I did commence to work that process. I have been an engineer about twenty years. I had never worked superheated steam before this occasion.

Q. Will you describe to the jury the process which you use for disinfecting rags?

A. The process is this: We take our steam direct from the main boiler, passing it through a steam coil 500 feet in length, laying over a furnace bricked in. The steam from that passes through the pipe into the box, and from there into the bale through the superheated coil. This pyrometer is adjusted through the top of the box, hanging down in that way (witness illustrating with the pyrome-
ter). Inside of this pyrometer there are a series of tubes,
360 and as the heat strikes it, it gives the temperature of the dial.
It gets the heat from the lower side or end. This pyrometer
is graduated from zero to 1,200 degrees.

Q. Can't you give us a little more specific description of that?

A. Then from that we have another process which is hot air, and also another superheated coil, for which we have a large blower, which forces the air through the coils, and then follows the superheated steam, and we run that up to 500. That dries the bale out. Then we take the cold air, which is another large blower, forcing the cold air into the box and cooling the bale off. Then the bale is drawn out and put away. The boiler is about 100 horse power. It is six feet in diameter, 12 feet long, and had 280 tubes.

By the Court: You first say that you force steam through the bales, then hot air, and then cold air?

A. Yes, sir.

Q. How long did that whole process take?

A. From eight to twelve minutes, sometimes fifteen minutes, depending upon the size of the bale.

Q. How long do you keep the steam in the bale?

A. Eight or ten minutes. That depends upon the size of the bale.

Q. Then how long does it take to force the air through?

A. Not more than a second sometimes. It depends upon the size of the bale.

Q. And then you force the cold air through?

A. Yes, sir.

By Mr. Goodrich:

Q. This box into which the bale is run is an air-tight box?

A. Yes, sir. There is no method by which the superheated steam can get into that box, passing through these perforated screws, except by passing through the bale itself.

Q. You didn't tell the jury how these hollow corkscrews are run into the bale?

A. There are from three to five of those screws. On here (witness pointing to the butt end), there is a head six 361 inches in diameter, covering up the whole face as the bale approaches the head. There are five of these screws going into the ordinary bales, and when it is run up clear to the head, it makes it perfectly tight, so that no steam can escape except through those perforated holes in the screw. When a bale is finally ready for the injection of the steam, it is drawn close up to the back of the box so that no steam can escape. There is a rotary motion imparted to those screws which draws the bale in. There are five screws; four of them turn to the left, and the other turns to the right. That keeps the bale upright. We had five of these disinfecting machines. Some of them had three screws and some five. They were all, with that exception, substantially alike. The lower end of the pyrometer did not touch the bale, but was in the open — of the box. I saw the degree of heat which the pyrometer registered with each bale. The lowest that any bale by the Vigilante registered before I took it out was 330 degrees; nothing went less than that. I was not there all the while. Some other person took my place nights. I don't remember his name. I do not know how many bales of rags of the Vigilante I disinfected. There was no bale from the Vigilante which came into that disinfecting place that was not bored and treated in the process which I have described.

Q. When the bale came out from the box what was the condition of this hole? Would it close up?

A. Some of them would, and some would not. The injection of this superheated steam dampens the interior of the bale, and that we correct by injecting hot air after the superheated steam is turned off, and then the bale is cooled by the injection of cold air so that a person could lay his hand on a bale immediately after it came out of this place.

362 Q. Did you examine some of these bales after they came out of the box to see whether that hole was not there, as one of the witnesses said, like an aug*u*r hole in a board?

A. I have noticed sometimes that the holes were not left there; sometimes the holes would be all closed up.

By the Court:

Q. Do you mean that there was no indication of a hole there?

A. Sometimes you could see the holes. There would be an indication within 20 minutes or half an hour of a hole there, but the following morning it would be impossible to find the hole.

Q. What caused that?

A. I don't know, unless it was that the bale was hot when it was taken out, and wet inside, and then being piled up one bale on top of another after they were disinfected.

By defendants' counsel:

Q. These bales came off the lighters?

A. Yes, sir; they were wheeled into the warehouse on trucks; one on a truck. They were put up in piles and some were left on the truck ready to run in the machines. After they came out of the machines they were then run to the back side of the building and piled. I don't know when they came to be shipped, how they were shipped after that.

Cross-examination by plaintiffs' counsel:

After we put in that corkscrew, and put the steam through that, then we dried the bale by the injection of hot air. The drying process took a minute or a minute and a half. After we had run through that bale superheated steam for eight minutes, then in a minute and a half hot air would not dry the bale in every part, but it would dry up most of the moisture. It was the intention to dry up the moisture as much as we could. If we left it in there long enough it might dry it. That was the purpose.

363 Q. How long do you require to let the hot air p*re*meate the bales of rags in order to thoroughly dry them?

A. That depends how much moisture there was. We had 330 degrees of steam and there was some moisture from that, but not so much as there might be; it might be a great deal hotter. From my experience it would require five minutes to dry those rags by hot air. We did not give hot-air application to them for five minutes at all times, because we thought they were dry enough. We consider partially dry, dry enough. We intended then to dry them as well as we could. We didn't want to burn the rags. There might be danger of burning them. There are combustive matters in some rags. We intended to dry the moisture away to the extent of two-thirds. That would take about five minutes. That would require us to leave them about three minutes; we would take half a minute or a minute to put the cold air through them, so that our process would require from twelve to fifteen minutes for each bale; we had five machines at work; it would take about a minute to put a bale in the box and out again, and a minute for putting it in both, that is thirty seconds each way, so our entire process would take about sixteen minutes; the rate at which we could disinfect bales would be a little less than twenty every hour; that was the extent to which we could do it; we had one assistant at each machine; his duty was to turn on the steam and shut it off again; I was watching the pyrometer.

Q. No skill and labor in particular was required, was there?

A. Yes, sir.

Q. What character of skilled labor?

A. Engineer and fireman; I had five assistant engineers and the fireman was furnished from the other house, I believe; that is all the labor we had there and one machinist for general work; so I and those five men and this machinist consisted the force which the disinfecting company had there; I sometimes went away at
364 night; I have stayed there day and night, twenty-four hours
at a time; I don't remember the date when that occurred; I am working now for Mr. Bartlett; Mr. Willard Parker engaged me for the disinfecting company, I think I came to him by a friend of mine; Mr. Blackman was one of the inventors of this machine; Mr. Parker engaged me; I don't remember the date; it was after the machine was put in Bartlett's stores; Mr. Parker was not there very much; Mr. Blackman was representing the disinfecting company; he was there most of the time; we have some of those machines over there now with five screws in them; they are not working; I am now working for Mr. Bartlett as engineer; I ceased to be engineer of the stores; I have charge of the Roberts and Mediterranean and Harbeck's stores as engineer.

Q. You have a kind of general commission as engineer among all the stores?

A. Yes, sir. That pyrometer showed a temperature of 330 degrees. That was in the box. It was not in the bale.

Q. Did the pyrometer in any way show what the temperature of every part of the bale was?

A. It showed that the temperature would have to go through the bale.

Q. When did you cease disinfecting rags?

A. I don't remember the date; I think it was along in the summer. It might have been August.

Q. When was the fifth screw put into the machine?

A. That I couldn't tell you.

Q. During June, 1885, did they have more than three screws in the machine?

A. Yes, sir.

Q. It was before June that they put in five screws?

A. It was before I went there. To each machine five screws.

Q. Did you hear the testimony of Mr. Berry that some had three screws and some five?

A. Yes, sir; they could be adjusted with three or five.

Q. Were they adjusted three or five?

A. Yes, sir.

Q. Were they all adjusted at three?

365 A. No; they could be arranged for five screws, and they were.

Q. Did you hear Mr. Berry say that some had three and some had five screws?

A. One of them might have been broken off.

Q. And you repeat your testimony, that with five screws of that character, with steam injected in the bale, and then hot air to dry the bale and then cold air to cool it, and after the bales had been reduced to such a temperature that you could put your hand upon them, that the holes would close up afterwards and leave no indication that they had ever been disinfected?

A. Yes, sir.

By the foreman of the jury:

Q. Didn't you use three or five screws, according to the size of the bale?

A. Yes, sir.

Q. You did do that?

A. Yes, sir.

To plaintiffs' counsel: This disinfection of the Vigilante's cargo began on the 13th. I can't remember the date it ended. I couldn't tell how long it took. I was in charge of that all the time, but I didn't keep any account how long it took. The pressure we used to keep on the boiler was from ninety to a hundred, and five tons of coal a day were consumed; with five tons a day, we could keep the five machines going and supply all the steam we needed. With the aid of five men and myself the business was done.

To defendants' attorneys: I was not in Mr. Bartlett's employ before I went to this disinfecting company. Mr. Bartlett has a number of engineers from 25 to 30, and I occupied the position of chief engineer. And these are the men that I range up and down those stores to see to. I superintended the processes of the barge Erie. We got extra pay for night work. This process was, I believe conducted night and day of the disinfection of the rags of the Vigilante.

366 Recross-examination by plaintiffs' counsel:

I don't remember how long that night and day work kept up. I did not say that I was there all the time.

Q. Was there any disinfection going on when you were not there?

A. My assistant was there.

Q. One of these men that you spoke of?

A. No; I had another man, an assistant, looking after the boiler. I was promoted to be chief engineer of Bartlett's stores last September, or thereabouts. I had not worked for Mr. Bartlett before I was engaged there, I had worked for Mr. Parker. I had not worked for Mr. Parker before he employed me in the disinfecting company, and then I worked for the disinfecting company. After that concern went out of business, I went to work for Mr. Bartlett immediately. I was promoted at once to be chief engineer. I was made chief engineer from the employment of the disinfecting company.

By the seventh juror:

Q. Were not these rags wrapped up in some kind of covering?
A. No, sir.

By defendants' counsel:

Q. How were these bales bound up?
A. With iron hoops, and corner pieces of wood.
Q. Were other bales which you disinfected, wrapped up in jute cloth?
A. Yes, sir.
Q. But these were not?
A. These were not.

By plaintiffs' counsel:

Q. Where did the bales take fire, that you speak of?
A. Sometimes in the centre, and sometimes close to the end; that was from hot steam. The steam fired them most of the time; the steam did not shed moisture around where it went at all times. Superheated steam is occasionally dry, and occasionally moist. It is superheated when it is moist, yes, sir.

367 THOMAS SHEIL, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

By defendants' counsel:

Q. I have been in the employ of E. B. Bartlett and Company for some time. I was foreman in charge of the laborers of Mr. Bartlett in handling the bales of rags from the Vigilante. I remember the time when the Vigilant's rags came there. I attended to the labor part in handling those rags. I hired the men to do the laboring work. I saw the rags taken off the lighter and run up to the machines. And then after that process I cleared them off. Until we went to run night and day I was there all the time. Somebody took my place when I was absent. No bale went back to be piled up, so far as I know, without passing through the process of disinfection; they couldn't, because they didn't go in the same place. All the bales that were taken in there to be put through the process of disinfection, so far as I know, were all disinfected and then sent back to be tiered up; every bale. When the rags were first taken in they went into a room which was devoted simply to disinfection into the disinfecting department. After that disinfection was accomplished the rags were taken out of that room into another place where they were piled up.

Cross-examination by plaintiffs' counsel:

Then they were taken into the back of the store. I could tell a bale that was disinfected from a bale that was not by the heat of it, three or four hours after.

Q. How long did the heat stay in the bale?

A. You could tell it in a day or two days after.

Redirect by defendants' counsel:

368 I know that this patent was put up for the purposes of the Paper Stock Disinfecting Company. And some of these rags were taken up to the second floor and tiered up after disinfection. We delivered these rags afterwards from the warehouse; I couldn't tell the date. It was some months afterwards I examined the bales to see whether there was any signs on them of these screws having been put in; there were many of them that there was no sign in; some of them were done over again to see whether the hole would remain in them, but it didn't remain. We put it in the machine the second time to see whether the old hole was there. It would make a new hole.

Recross by plaintiffs' counsel:

Q. Did you ever devote any enquiry to know why it was that some rags would have that hole and some would not?

A. I think there were different kinds of bales, some of them were tiered up and that makes a difference.

Q. What was your object in trying to discover whether the holes would remain there?

A. Because we thought the holes should remain there.

Q. Did you know there would be any dispute about it?

A. No, sir.

Q. You just did it simply for an experiment?

A. Yes, sir.

By the seventh juror:

Q. Wouldn't the point of the screw as it came out the last time tear the rags out a little so that you could see where there had been a hole?

A. No, sir.

By defendants' counsel:

Q. Has Mr. Bartlett ever spoken to you about the subject of these holes in his life?

A. No, sir.

By Mr. Cochran:

Q. Did he ever speak to you?

A. I don't believe I have ever talked to him five times altogether.

Q. Who told you to come here?

A. Mr. Berry.

Q. You and he talked about it on the way over?

A. You know he just told me he wanted me to come over here.

369 Q. Didn't he tell you what he wanted you for?

A. No, sir; I didn't know that I was coming here to go on the witness stand.

Q. Didn't Mr. Berry tell you so?

A. He said he wanted me to come here.

Q. Did he say he wanted you to be a witness?

A. He did not.

Q. Then you came over here just for a holiday?

A. I had to come because I am in his employ.

Q. Do you regard yourself as coming for a holiday?

A. Well, I am very glad to get away from the stores, because I am always there.

Charles F. Kane, called as a witness in behalf of the defendants, being duly sworn, testifies as follows:

By defendants' counsel:

I am connected with the custom-house, and have been over ten years. I am still there. I was district inspector of the Baltic stores, Union, Kelsey stores, and along there from the Hamilton ferry on the south to Robinson's stores on the north in the year 1885. During that time I had occasion to sign documents in regard to the bales of rags by the Vigilante, as inspector of rags. The Secretary of the Treasury designated me as inspector of rags, and the Baltic stores at that time lay within my district. As inspector of rags I did not have charge of the rags of the Vigilante; I had no custody of them, but I had to see that they were disinfected. I signed a receipt for those rags. I have it with me (witnesses produces paper). These are the certificates for the rags that were disinfected that came from the ship Vigilante.

Defendants' counsel puts the receipts in evidence, and they are marked Defendants' Exhibits 48 to 56 inclusive of this date.

Witness continuing: The rags mentioned in those certifi-
370 cates had been disinfected on the day of the date of the cer-
tificates. I have my appointment here as inspector of rags
(witness hands paper to counsel).

Defendants' counsel: I read this in evidence:

"Treasury Department, Office of Secretary,
Washington, D. C., *January* 12, 1885.

Mr. Charles F. Kane, inspector of customs, New York city, N. Y.

Sir: You are hereby designated as inspector of rags at the Baltic stores, Brooklyn, N. Y., without compensation, in addition to your present duties as inspector of customs, No. 127.

Very respectfully, H. McCULLOUGH, *Secretary*."

Cross-examination by plaintiffs' counsel:

My duties as district inspector take me pretty well over my district.

Q. How can you tell whether those goods were disinfected or not?

A. I could tell only from the statement made by the foreman of the stores; that is in regard to all of them.

Q. That is, the disinfecting company told you they were, and so you certified that they were?

A. No, sir.

Q. What foreman told you?

A. The foreman of the stores.

Q. Who is the foreman of the store?

A. I mean Mr. Sheils.

Q. The gentleman who has just been on the stand?

A. Yes, sir.

Q. So that whatever you have certified to in that certificate has simply been the information that Mr. Sheils gave you?

A. Not at all, sir.

Q. What other knowledge did you have?

A. I saw a great many disinfected myself.

Q. But when you certify to a certain number of bales as having been disinfected on June 19th, or June 23d, for instance, do you mean to say that on either of those dates you stood by and counted the number of bales?

A. No; I did not.

371 Q. Mr. Sheils did the counting?

A. I presume he did.

Q. And he reported to you?

A. No, sir.

Q. Who reported to you?

A. The book-keeper of the stores gave me a statement,

Q. That was Bartlett's book-keeper, wasn't it?

A. Yes, sir.

Q. I see in your appointment that the arduous duties as a rag inspector were imposed upon you without additional compensation?

A. Yes, sir.

Q. Did you get compensation anywhere?

A. I did.

Q. From whom?

A. Mr. Bartlett.

Redirect.

By defendants' counsel:

Q. What additional compensation did you get?

A. I was paid for the nights that we worked. That is the only pay that I received. That is customary where we have to work nights.

Recross.

By defendants' counsel:

Q. Was that pay for working nights or was it pay for being an inspector of rags?

A. Yes, sir; as an inspector of rags.

Q. When you worked during the day did you get nothing from Mr. Bartlett?

A. No, sir.

Q. How many nights did you work?

A. We commenced on Saturday night and the last night we did any work was on a Friday night. We worked every night, except Sunday.

Q. Then you worked every night during the time of this rag disinfection, except Sunday night?

A. We stopped on a Friday night.

Q. Well, with the exception of Saturday and Sunday?

A. Not the whole night long. The first night we worked up till twelve o'clock, then we commenced again on Monday morning at one o'clock, and I think we worked up till twelve o'clock 372 Monday night; but anyhow after that we stopped at eleven o'clock; so we worked four hours every night.

Q. What compensation did you get for that?

A. I think seventy dollars.

Q. You observe your appointment was dated on June 12th and you continued to be rag inspector down to when?

A. I don't know. Rags came there for a considerable time.

Q. Well, at the time you were there you got paid ten dollars a night?

A. No, sir.

Q. But what compensation did you get?

A. As an inspector of customs I have no right to take any money, but as an inspector of rags I did take this money for working nights.

Q. Mr. Goodrich asked you if it was usual among inspectors to take extra compensation for working at night. Did you understand him to refer to inspectors of customs or inspectors of rags?

A. The law allows pay for night work.

Q. To whom?

A. The inspectors of customs on ships.

Q. Were you treated then the same as a ship's inspector?

A. I presume I was entitled to pay. I asked it, and received it.

Q. Will you tell us at what rate you were paid?

A. Mr. Bartlett asked me what I thought I ought to have, and I said about the same as though I was working on a ship all night.

Q. And what amount was that?

A. Ten dollars a night.

Q. And while you were rag inspector Mr. Bartlett paid you at the rate of ten dollars a night?

A. No, he did not. It was only on these rags that we worked at nights.

Q. Did you ever get any other compensation for working on rags from Mr. Bartlett?

A. No, sir, not a cent from anybody.

Q. So that your duties as rag inspector entailed upon you additional labors; but you got no compensation except when you worked at night?

A. No, sir, I didn't consume any more time.

373 Q. What other duties did you have to perform as a customs inspector?

A. District officer and discharging officer.

Q. Did that mean that you had to take general cognizance of reception and discharge of goods?

A. Some of the goods that came there I had to discharge. I had an associate with me.

Q. Did that keep you pretty busy?

A. It depended on the number of vessels.

Q. You didn't see much of the actual disinfection of these rags?

A. I saw a great deal of it.

Q. Will you explain to us that process of disinfection?

A. The bales of rags were brought in from the lighter or the wharf on a hand-truck supplied with two extra wheels in the front of the truck.

Q. How many bales on a truck?

A. One. Then this truck would be pushed into this box. These screws would be set in motion by a man who stood at the leaver and managed the machine, and there the bales was gradually drawn up into the box.

Q. How many of those bales did you see disinfected, actually, of the Vigilante?

A. I saw more of the Vigilante's cargo than any other cargo, because it was done at night and I had nothing else to do.

Q. Do you know of any reason why that cargo should be done at night?

A. No, sir. I was the district rag inspector there all the time since January 12th. And during that time a great quantity of rags had been disinfected. The only rags that I knew to be worked on at nights were the Vigilante's rags.

Q. And was any reason given to you for special speed?

A. I ought not to say that, because there might have been some towards the latter end. The only rags that I knew of were the Vigilante's rags.

Q. And you were paid for extra night-work there?

A. Yes, sir.

374 Q. And you don't know why it was that these rags formed exception to the general rule?

A. Yes, sir.

Q. What was it?

A. I think I heard, though I wouldn't say it positively——

Q. I want to know if anybody in authority over there, the Paper Stock Coompany or Mr. Bartlett, told you any reason.

A. No; Mr. Bartlett never told me anything.

Q: Except when you got the extra compensation?

A. I never had any conversation about the compensation for these rags until the next year.

Q. A year after?

A. No, sir; in the December or January after.

Q. Then you had a conversation with him?

A. Yes, sir.

Q. Did you ever see Dr. Smith at any time about this disinfecting?

A. No, sir; I don't know him.

By defendants' counsel:

Q. Was that the largest shipment of rags that ever came in there while you were there?

A. Yes.

Q. Did you have your own pyrometer with you to make the test?

A. I don't know whether it was a pyrometer. I had an instrument that was furnished to me. I don't know by whom. There were several there that belonged to the concern. And I sometimes took one of those pyrometers and made a test myself. I know a pyrometer when I see it and I know what is looks like.

Q. Can you describe the instrument, as compared with the one which I now hand to you (indicating)?

A. That is precisely the same. There were several of them over there, one on each box. I looked at the number which it registered from time to time.

Q. How much of the time were you present when this disinfection was going on?

375 A. All the time, as much as possible. You see this appointment of mine didn't call for me to be there altogether. I have to attend to my duties as district inspector and sometimes as discharging inspector. I went in and out of there at irregular times. I could tell when this machine was going inside by the exhaust steam. Sometimes I went in the engine-house myself to see if they had the proper degree of heat on the boiler. That was a part of my duty. I have been in the habit of receiving cargoes and certifying to the custom-house.

Q. Did you always stand by and count the number of goods?

A. That is impossible with a district officer.

By plaintiffs' counsel:

Q. That is the kind of a machine you say——

A. Excuse me. I think, as a public officer, I am entitled to make an explanation. I have had several cargoes discharging at the same time, and there are not officers enough in this port to man all the vessels, and with certain kind of cargo discharged by district officers, such as sugar, salt, iron ore, and so on, it does not require what is called checking out.

Q. Is that the kind of machine that you tested with (indicating the pyrometer)?

A. No, sir; mine was probably half as long as that and it had a thermometer in it with the tube perforated with holes. This is not the instrument that I went around with; that was on the box. The instrument I had was nothing like that. It did not have a dial here which showed any degree of heat; it was like a thermometer. I presume it was a thermometer. I have seen one that could register 330 degrees. I think we had several over there.

Q. Was it an ordinary thermometer?

A. I don't know, sir.

Q. Was it an extraordinary one?

A. It may have been.

376 Q. You didn't attempt, by that instrument, to gauge anything like the correct heat in these boxes?

A. We may have done that; I don't remember that exactly. There was one of this kind which hung in all the boxes. I relied upon this and the gauge in the engine-house. I relied upon this pyrometer altogether, although I had no instructions regarding anything of the kind.

By the seventh juror:

Q. Were you given your register by some officer of the Government, or by the parties having charge of this disinfecting machine?

A. I don't know who it belonged to. I never had any orders to use any gauge. I will say this, though, that when I was called over by Mr. Benedict, the surveyor, who is my superior, and given this letter of appointment, he also gave me the circular of December 22d, and said that this process called No. 4, that I have heard so much about here, would be the one used; and then he told me I would have to see that there was a pressure of four atmospheres on the boiler, and 330 degrees of heat in the bale; but I never had any instructions about these pyrometers. Therefore I used to spend a part of my time in the engine-house looking at the gauge of the boiler and the gauges on the superheaters.

By defendants' counsel:

Q. What did you find as the number of atmospheric pressures on the boiler gauge?

A. More than required by the circular; considerably more than 65 pounds. A pressure of one atmosphere is 16 pounds and a fraction. I think the gauge was generally over 70, or may be 80. I am sure it was considerably more than the circular called for.

By plaintiffs' counsel:

Q. The juror asked you if the machine with which you tested the heat in that box was given to you by a Government officer?

A. No, sir.

377 Q. It was given to you by somebody in Bartlett's stores?

A. I don't know as it was given to me at all.

Q. You got it there?

A. Yes, sir. I used to use it more as a matter of curiosity. I think over 17,000 bales were disinfected in Bartlett's stores altogether.

By defendants' counsel:

Q. In what part of the disinfecting room did you get that instrument which you used?

A. The first one that I saw I think Mr. Bartlett brought to me, and the others that they had were hanging up there.

Q. About the room and in common use?

A. Yes, sir.

Mr. Goodrich: I will read one of these papers as a sample:

"Port of New York, June 23d, 1885. I do hereby certify that 539 bales of old rags, imported by general order, ship Vigilante, and marked Myer & Co., Superior, 79, M. 420, No. mark, 40, deposited in Baltic stores on the 22d of June, 1885, have been disinfected by the Paper Stock Disinfecting Company in the manner required by process No. 4, as prescribed by the Treasury circular of December 22d, 1884."

By plaintiffs' counsel:

Q. At the time you signed these certificates did you know who was doing the disinfecting?

A. That circular there would tell me that it was the Paper Stock Disinfecting Company. I mean the receipts. That is all I know about it.

FRANKLIN D. LOOMIS recalled by the defense.

By defendants' counsel:

I have been in the habit of using pyrometers, and I know what one is.

378 Q. Will you read what appears on the face of that pyrometer?

A (Reading). "August Zaubitz." That is a standard pyrometer, used by engineers. I have used pyrometers in heating brick furnaces. Instruments by that maker have been used by me, and that is a well-known standard maker.

By plaintiffs' counsel:

A. How is it that you have so much difficulty in pronouncing that name, if he is a standard maker, and if you are in the habit of using these instruments?

A. I pronounce it August or Augustine.

Q. You cannot even tell me even how to pronounce the name of the maker?

A. No, sir.

Q. Are you quite sure that that August Zaubitz is the patentee of that?

A. I wouldn't answer that. He is the maker of it.

Q. Then do you desire to be understood simply as swearing that the name of the person there indicated—the maker of the instrument?

A. Yes, sir.

Q. Now, read something else on that pyrometer?

A (Reading). "Paper Stock Disinfecting Company. Parker & Blackman, patentees."

Q. Does not that refer to the pyrometer as being patented by Parker & Blackman?

A. It indicates that he would be the patentee of the pyrometer.

Q. Did you ever know of such a pyrometer before until you saw it in use at this establishment?

A. Yes, I have seen this same man's make before.

Q. That patent?

A. I don't know anything about the patent.

Q. The name you see at the end there is the name of the manufacturer; he has nothing to do with the patent?

A. No, sir.

Q. Did you ever use a Parker & Blackman instrument of that character before?

A. No, sir.

379 By defendants' counsel:

Q. In your use of that machine did you find it was a correct register of the degree of heat?

A. Yes, sir.

By plaintiffs' counsel:

Q. How?

A. By comparing it with thermometers.

Q. That is the way you ascertained?

A. Yes, sir.

Q. How often did you compare it?

A. Probably once or twice a week.

Q. How many of them did you compare?

A. We had nine, I think.

Q. And you compared each one with thermometers?

A. Whenever we thought one was out of order; and when we didn't think that, we didn't make the comparison.

Q. What is the name of the maker of this with which you are so familiar?

A. August or Augustine.

Q. And yet you say you are very familiar with his articles that he makes?

A. With that style of make.

Q. You know the maker as a standard maker of these articles?

A. Yes, sir.

Q. Did you ever know much similitude between the name August and Zauberts?

A. Yes.

Q. You think there is?

A. Yes, maybe.

Q. Did you ever hear of Zaubitz?

A. Yes, sir.

Q. Who do you think he is?

A. Zaubitz.

Eighth day.

AUGUSTINE ZAUBITZ, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

By defendants' counsel:

380 My business is that of manufacturer of steam gauges, thermometers, pyrometers, &c. I have practical knowledge of the manufacture of pyrometers. I made this pyrometer (indicating) for Parker & Blackman. The word "Fahrenheit" on here refers to the scale of the Fahrenheit thermometers. There is also upon this face: "The Paper Stock Disinfecting Company, patentees, Parker & Blackman;" the use of the word "patentees" is for the process of the disinfecting which was done by the Paper Stock Company. I do that for any merchant or manufacturer; I follow their directions to have such instruments manufactured.

(By the Court:)

Q. They were not the patentees of the pyrometer?

A. No, sir; I am.

Q. Is that a proper and accurate pyrometer?

A. It is.

Q. You manufactured quite a number for the persons named on it?

A. Yes, sir.

Q. How many?

A. About 21.

Q. Were all of them accurate registers of the degree of heat?

A. Yes, sir.

Cross-examination by plaintiffs' counsel:

Q. Are you the patentee of that thermometer?

A. There is no patent upon it. You cannot get a patent upon it. That pyrometer was manufactured for the Paper Stock Disinfecting Company for the purpose of testing heat. It was to test the heat of the box that the bale was in.

Q. How did the heat get into the box so that it registered?

A. The pyrometer was placed this way in the box (indicating). Screwed in at the side of the box. It was in the box, but on the side, so as not to interfere with the bale; between the bale and the side of the box. The heat from a valve acted upon that pyrometer and recorded 330 degrees. I was present at the test. It was from the valve that the heat came which registered. It went through 381 the bale; there was a lever on the box, and the steam went into the screw and then into the box. The minute I opened it my thermometer shot up slowly to 330 degrees before they left the valve go again with the spring.

Q. Did that register the heat that was in the bale or the heat that was in the box?

A. It was equal.

Q. Was it the heat of the atmosphere or the heat of the bale itself?

A. It was the heat of the bale and of the box, both; it must have been.

By the Court:

Q. There was no communication between the face of the pyrometer and the interior of the bale?

A. There was one steam inlet that went into the bale, and the other one went into the box.

Q. Did this pyrometer communicate with the interior of the bale?

A. Of course, it had the temperature of the bale, which was the same as the box.

By plaintiffs' counsel:

Q. That was in the space between the bale and the side of the box; it did not touch the bale; how could it record the heat of the interior of the bale if it did not touch the bale?

A. Because the steam which went into the screw went into the box at the same time, because there were two valves there with one inlet.

Q. And this recorded the heat of the steam that came in the valve and went into the box, but didn't go through the bale of rags at all?

A. Yes.

Redirect by Mr. Goodrich:

Q. Where was the process of which you are speaking?

A. In the Union stores in Brooklyn.

Q. Known as the Kelsey store?

A. I don't know.

Q. Are you not somewhat mistaken in regard to a screw going into the box itself?

A. No, sir.

382 Q. Aside from the screws which went into the bale?

A. No, sir.

Q. Did you see that screw in the box?

A. Yes.

Q. Are you certain of that?

A. Yes, sir.

Q. Didn't that screw that went into the box also go into the bale?

A. Yes, of course.

Q. Every screw that was in the box went in the bale?

A. There was only one screw there.

Q. And that is the only one that went into the bale?

A. Yes, sir.

Q. There is a misapprehension here, I think—that screw went into the box and into the bale?

A. Yes, sir.

Q. The same thing?

A. Yes, sir.

Q. Every screw that went into the box went into the bale?

A. Yes, sir.

Q. There was no heat pouring steam into the inside of the box?

A. Yes, sir.

Q. How many screws were put into the box and into the bale when you saw it?

A. Only one.

Q. And that was the only screw in use?

A. Yes, sir.

Q. How many screws were put into the box and into the bale when you saw it?

A. Only one.

Q. That was the only screw in use?

A. Yes.

Q. Do you understand what I ask you now?

A. I understand there was one screw. There were only three boxes there at the time I saw them.

Q. There was a test made of one box and you think there was only one screw went into it?

A. Yes, sir.

Q. Do you know the date of that test at the Union stores?

A. I couldn't tell that, but I could very readily find out when it was changed because I brought them over myself. Mr. Parker sent word over that he must have the pyrometer because he wanted to make a test, as there were some experts coming.

Q. The store where this test was made was between Harrison and De Graw streets?

383 A. I couldn't tell you; I only know it was the Union stores; whether it was the Baltic stores, I couldn't say.

Q. In how many boxes was this test going on?

A. In three boxes.

Q. How many screws were put into the bales?

A. Only one.

Q. Only one screw in each box and that screw went into the bale?

A. Yes, sir.

Q. The misapprehension that I took from your testimony was that in addition to the screw which went into the bale there was another screw pouring steam into the box besides this?

A. No, sir; there was no other screw; it was an inlet from the valve. Then the minute they put the pyrometer in it went up, which it would not do if it went right through the bale.

Q. You were subpœnaed by me, were you not?

A. Yes.

Q. And then Mr. McClintock and his lawyer came to see you after that last night, didn't they?

A. Yes, sir.

Mr. Macrae: I wasn't there.

Mr. Einstein: I take the responsibility of that.

The Witness: There was one steam inlet that went into the screw and the other one went into the box.

By plaintiffs' counsel:

Q. Is that the gentleman over there that called upon you last night (pointing to Mr. Berry)?

A. Yes, sir.

Q. Look at the instrument which I now show you (handing screw to witness).

A. Yes, sir.

Q. Was that the kind of a screw that you saw going through the bale of rags?

A. Yes, sir; the box was over and the bale was put on a truck and shoved in, and the end of that screw went into it, the same as you would turn a lathe, and it revolved, and as soon as the bale was up close to the end of the screw, the lid of the box was
384 closed, and the spring was pulled and steam came out all around the bale, and my pyrometer went up until it registered 330.

Q. Besides the steam that was injected through that screw, there was another valve that injected steam into the box?

A. Yes, sir.

Q. And it was the steam injected by the valve into the box which caused the pyrometer to register 330?

A. Yes, sir.

Q. How often had you been to those stores?

A. Four or five times.

Q. You were there on the occasion of that test?

A. Yes, sir.

By defendants' counsel:

Q. Was the steam which passed through the bale and its heat registered by the pyrometer?

A. It went through the bale just the same; there can't be any difference. If you have 80 pounds of pressure you have equal to 330 degrees of heat. You can't have it any higher from the inside of the bale.

Q. I ask you whether this pyrometer measures the temperature of the steam which passed through the bale.

A. Yes, sir.

By plaintiffs' counsel:

Q. After it passed through the bale?

A. I say you can't have it any higher.

Q. The steam comes into that box from two sources?

A. Yes.

Q. One valve which diffuses the steam all around the bale, and the other which goes into the centre of the bale?

A. Yes, sir.

Q. Do you think that steam which goes into the centre of the bale could be forced through the rags?

A. Of course.

Q. In the process of going through the rags, would not that steam become somewhat cool?

A. It evaporates, of course.

385 Q. It would then be a good deal cooler than when it went in?

A. Certainly.

Q. That was not the steam recorded by that pyrometer?

A. No, sir.

Q. It was the steam that never went into the rags?

A. The steam in the box.

Q. The steam in the box around the bale?

A. Certainly; that is what I said.

(By the seventh juror:)

Q. How does the heat effect this thing?

A. By the expansion and contraction of three different metals.

(By the Court:)

Q. Where are the metals?

A. The copper on the outside and on the inside there are two metals. If the pyrometer is accurate it registers just as perfectly as a thermometer does. Mr. Blackman said that he found that the minute you struck the heat on, with a thermometer, the expansion of the glass is so great that it will break, and therefore he wanted these made of metal.

(By the third juror:)

Q. Where does this commence to register?

A. That point is set on the temperature of the atmosphere.

By defendants' counsel:

Q. Do I understand you to say that the steam which went into the box went into it from an aperture in the screw?

A. Yes, sir.

FRANKLIN D. LOOMIS recalled by defense.

By defendants' counsel:

Q. The last witness has just testified that there was a valve, in the test made at the Union stores, which permitted the ingress of heat into the box without passing through the bale. Is that so?

A. No, sir; there was not.

Q. He is mistaken about that, is he?

A. He is mistaken. All the screws had the holes in the same positions, beginning six inches from the head. There was no 386 place on the valve through which steam could come into the box without passing through the screw, and therefore passing through the bale. All the screws were alike, apertures and all. The Union stores and the Baltic stores are not the same; they are a block apart. After some of these bales came out of the boxes I endeavored to put a pyrometer into the holes which had been made by the screw, and some of them I could put it in and some I could not. I could not insert this long rod into the holes. I used to try to do so but I could not; the holes would close up the moment the screw had left it. After the bale came out of the box it was sometimes wheeled back and thrown over the balk in the disinfecting room.

Q. Did you ever get a pyrometer into a bale after it came out of the box so as to take the temperature of the bale?

A. Yes, sir: the temperature was 330, sometimes 340, that was even after the cold air had been passed through, or, around it, rather; the pyrometer sometimes registered in the box 340; sometimes 350.

Plaintiffs' counsel:

Q. Do you remember testifying yesterday that you could put your hand on one of those bales after it came out of the box?

A. Yes, sir; the surface of the bale.

Q. Do you mean to be understood as swearing that while the temperature of the surface of the bale was, so to speak, normal, the temperature of the interior of the bale was up to 330?

A. Yes, sir.

Q. Where did you put the cold air through?

A. On the surface of the bale.

Q. Didn't you testify that you forced cold air through those very corkscrews yesterday?

A. No, sir.

Q. Will you now swear that you didn't?

A. Yes, sir.

387 Q. What was the object of forcing cold air around the bale?

A. I don't know what their purpose was.

Q. You did it without knowing any reason for it?

A. I did it according to orders. I will swear that there were three screws to each of those machines. I am positive of that. None of the machines had less than three screws, while I was chief engineer over there?

Q. The Union stores were next to the Baltic?

A. One block apart; they are sometimes called the Kelsey stores.

Q. So that when this witness spoke of the experiment at the Union stores, it was the same place sometimes called the Kelsey stores?

A. No; I wasn't there at the Kelsey stores.

Q. Didn't you say a moment ago that the Kelsey and the Union stores were the same building?

A. No, sir; I don't remember that I did.

Q. Are not the Union stores sometimes called the Kelsey stores?

A. No, sir.

Q. Well, where are the Kelsey stores?

A. Next to the Union stores.

Q. And then comes the Baltic stores?

A. Yes, sir.

Q. How far are the Kelsey stores from the Union?

A. Right side by side.

Q. Are they not all one building?

A. Yes, but there is a division wall.

Q. Not visible to the eye outside, is it?

A. No, sir.

Q. From the outside it appears to be all one building?

A. Yes.

Q. I understood you to say that when these screws were forced through a bale, the bale sometimes closed up and you couldn't even get a pyrometer through?

A. Yes, sir.

Q. Was that true also of those bales that were covered—that had covering around them like the Chinese rags, for instance?

388 Objected to on the ground that the evidence shows that none of the bales involved in this suit were covered; objection overruled; defendants' counsel excepts.

A. Occasionally it was.

Q. Do you mean to say that where a covering of jute over a bale was pierced by three screws of that size, and that with the screws subsequen-ly withdrawn, the hole in the covering closed up and revealed no trace of having been entered?

A. I didn't say it had.

Q. It is my question, then; so answer it again.

A. No, sir; the covering did not.

Q. Then the hole in the covering was always visible?

A. A portion of the time it was.

Q. Wasn't it always?

A. No, sir; not at all times. Take the coarse bagging and you couldn't see it.

Q. Do you mean to say that when this burlap covering was over bales of rags and three screws of this size were introduced into a bale and subsequently withdrawn, that the mark of those holes in the covering would disappear?

A. No, sir; you could see it in that, but jute butt covering you could not.

Q. And in any case you could see the screw marks to this day, in the burlap covering?

A. Yes, sir.

By defendants' counsel:

Q. Were any of these rags covered with burlap?

A. No, sir.

By plaintiffs' counsel:

Q. You remained there for some time after the Vigilante's rags were disinfected?

A. I did. I believe I went to Boston shortly after that. But I was there until the fall, with the same company, and all the time there were always three screws entering every bale of rags,
389 and sometimes five screws; and where there was covering the three marks could be seen.

Defendants' counsel: We have one or two experts whom we had intended to call, but, as we regard their evidence as cumulative, we will not delay the trial by putting in that testimony again, and so we will rest.

(Defendants rest.)

Rebuttal.

AUGUSTINE SMITH, recalled by plaintiffs.

By plaintiffs' counsel:

Q. What is that (pointing to a large bale of rags)?

A. That is a bale of rags that I bought from Herman Garbe. They were delivered from a storehouse. I don't remember what storehouse. The gentleman is in court that I bought it from. The bale is in the same condition now that it was when I bought it. I don't remember when it was delivered to me—about 18 months ago, I think. I see the smaller bale—the one sitting behind that large one. The large one is marked "609." I see the one back of it, the "306." That I bought from Lockwood & McClintock. That is in the same condition now that it was when I bought it. I don't remember when I bought it. I am familiar with Japanese rags. That smaller bale is a bale of Japanese rags.

HERMANN GARBE, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

By plaintiffs' counsel:

I see the bale marked 609. I identify it. I sold that to
390 Mr. Augustine Smith. That bale came from Shanghai, and shipped to Hong Kong. When it got here it went from the vessel to the barge Erie, and has been disinfected.

By defendants' counsel:

Q. Did you see either of those bales undergoing the disinfection process?

A. No, sir.

Defendants' counsel: Now, I move to strike out his evidence on that ground, that it is not shown that this bale ever underwent, or was alleged to have undergone, the disinfection process.

The Court: The motion is denied. I think it makes out a *prima facie* case when it was delivered and paid for.

Q. When did you see the bale 609 first?
A. When it got to Elliott F. Brigg's store.
Q. That is, in New York?
A. Yes, sir.
Q. That is the first you saw of it?
A. That is the first I saw it.
Q. Was it then piled up in the warehouse?
A. Yes, sir.

Defendants' counsel: I again move to strike out the evidence on the ground that there is no identification of that bale.
Motion denied. Defendants' counsel excepts.

The Court: Now, let the question be read.

By Mr. Cochran:

Q. Is the amount specified in this bill (producing bill) the sum that has been "paid in part for the disinfection of that bale of rags?"

Same objection, ruling and exception.

A. I paid a bill of E. B. Bartlett & Company for disinfecting this bale of rags.

391 Defendants' counsel: I move to strike out the works "of E. B. Bartlett & Company."

Motion denied. Defendants' counsel excepts.

Q. Will you point out to the jury any marks of the passage of three screws or two screws or five screws through that bale?
A. There is one screw on the top of the bale; in the middle of the bale on the top.

Defendants' counsel renews motion to strike out the evidence as incompetent, immaterial and irrelevant.
Motion denied. Defendants' counsel except.
At this point the jury inspected the hole in the large bale "609."

Mr. Goodrich: The experiment having been made by the jury passing the rod into the hole in that bale, we now renew our objection.
Objection overruled. Defendants' counsel except.

Cross-examination by defendants' counsel:

I am the head of our firm. I don't give any particular attention to these bales and the marks upon them. They are not stored in the same place where we have our office. I didn't see them from the time they came in the store until we delivered them.
Q. When did you first see that bale—this identical bale?
A. I don't know whether I saw this bale, but it is was among the bales of the shipment. I can't say that I saw this identical bale.
Q. When did you see this identical bale for the first time that you can swear to?

A. At Augustine Smith's store, in February, 1886. I sold it to Mr. Smith. And that is the first time that I saw this identical bale.

392 Q. How do you know it was this identical bale?

A. I can't swear to it, but it might be among the whole lot.

Q. Doesn't it often happen that the ends of bales which are wrapped in burlap get ragged by handling?

A. Very seldom.

Q. It does happen?

A. Yes; it might happen.

Q. You have men to sew up the ends when they get torn and ragged?

A. No; I never paid anything for mending or repairing these bales.

Redirect by plaintiffs' counsel:

Q. When the ends of bales were torn, in case they were perforated by a screw like that, the hole would still exist under the burlap, wouldn't it, even if it had been sewed up on the outside?

A. Yes, sir.

Q. Has this ever been sewed up?

A. Not to my knowledge.

Q. Hasn't been fixed in any way?

A. No, sir.

Emery W. McClintock, recalled by plaintiff.

By plaintiffs' counsel:

I see these two bales of rags (indicating); those are Japanese rags; they come from the Vigilante from Hioga, and they arrived here on the 30th of May; they were sent to Bartlett's Baltic stores; they are a part of the cargo of the Vigilante.

By the Court:

Q. State where these bales had been.

A. They were delivered from Bartlett stores to our truck and brought to our store, 276 Pearl street, and then delivered from there to Mr. Augustine Smith's store in Nassau street.

By defendants' counsel:

I first saw these two bales when they were brought from Bartlett's store; I will swear that I saw these two particular bales.

393 Q. What is there that enabled you to identify them?

A. They are marked.

Q. What are they marked?

A. I don't recollect.

Q. Then how can you swear that you saw those two identical bales brought from Bartlett's stores, if you don't even know the mark to identify them out of 2,920 bales of the same lot?

A. I know that those were the only rags.

Q. You have attempted to swear, even on my cross-examination, that you saw these two particular bales brought to your store from the Baltic stores, and yet you don't know the number of them?

A. No, sir.

Q. Nor any other mark upon them?

A. No, sir.

Q. When did these bales come into your warehouse?

A. Some time after we paid the bill.

Q. When was that?

A. October, I think.

Q. Were you there at the time these two particular bales came in?

A. I was.

Q. How do you identify these two particular bales?

A. Because they were sent to Mr. Smith's store.

Q. Did they remain in your store any time?

A. A short time, probably. I don't know how long.

Q. Can you tell whether they were there one day or one month?

A. Yes.

Q. Which was it?

A. One day.

Q. How many of these bales came into your store from the Baltic stores?

A. I should say probably 100.

Q. There were 2,920 in your consignment?

A. Yes, sir.

Q. All of which came from the Baltic stores to your place?

A. No, I didn't say so.

Q. Only 100 came to your store?

A. Yes, sir.

Q. Did you see each one of those 100 when they came in?

A. Yes.

Q. What time of the day did they come in?

A. Between ten o'clock and three.

394 Q. Perhaps later?

A. Maybe later, possibly earlier—during the day.

Q. Did they come in on different trucks?

A. Yes.

Q. How many on a truck?

A. Twenty-five, I think.

Q. Do you know?

A. Well, probably three tons.

Q. That would be from 15 to 20 bales on a truck?

A. Yes.

Q. Whose truck was it?

A. It belonged to our carman.

Q. Do you remember the date?

A. No, sir.

Q. Are you willing to swear that on the day those bales came into your store you were not absent from your store at all?

A. No, sir.

Q. Were you absent from your store?

A. Why, certainly.

Q. Did you see them all brought in, then?

A. Yes, sir.

Q. On the day those 100 bales came into your store, you swear that you were there all the time and saw each particular bale come in?

A. I never said that the 100 bales were delivered there on any one day.

Q. How many were delivered on any one day?

A. A truck-load.

Q. Will you swear that there was only a truck-load on each day?

A. No.

Q. That would make six loads?

A. About six or seven loads.

Q. And you can't tell the jury whether or not you were there when these loads came in?

A. Yes, I can; I was there.

Q. You now swear that you saw those two bales come in your store?

A. Yes, sir.

Q. On what day?

A. I don't know.

Q. Did they go together on the same truck?

A. Yes, sir.

Q. What is there on those two bales to enable you to select them out from the balance of the 100 bales?

A. Nothing.

395 Q. Yet you will undertake to swear that those two bales came in on the same truck-load the same day?

A. Yes, sir.

Q. What enables you to be so positive?

A. Because I know those two particular bales were sent to Augustine Smith's store.

Q. How do you know?

A. Because I saw them put on the truck.

Q. Are those the only two that were sent to Mr. Augustine Smith?

A. No.

Q. How many were sent to him?

A. Ten or twelve.

Q. How do you know that those two were among that ten or twelve?

A. I don't say those are all.

Q. You have attempted to say that those two bales came into your store on the same day on one truck?

A. Yes, sir.

Q. And that they were in the lot of 100?

A. Yes, sir; they were.

Q. Were they piled up in your store?

A. I don't think they were.

Q. What became of them?

A. They were sent to Mr. Augustine Smith.

Q. The same day?

A. The next day.

Q. They went into your store?

A. Yes.

Q. They were piled up with the other bales?

A. No, sir; these bales were sent to Mr. Smith.

Q. Well, where were they put before?

A. On the floor.

Q. In what part of the store?

A. In the front part.

Q. How do you know?

A. Because I saw them.

Q. Those two bales?

A. Yes, sir.

Q. Were there others there?

A. Yes.

Q. How many others?

A. Fifteen; maybe thirty.

Q. Is there any mark upon these two bales to distinguish them from the other thirteen?

A. No, sir.

396 Q. And yet you will undertake to swear that these two bales, which have no mark upon them which enables you to identify them from the other thirteen of that fifteen——

A. (Interrupting.) That is the truth.

Q. You saw them come into your store on the same truck, and you saw them go out of your store to Mr. Smith's?

A. Yes, sir.

Q. And you are now swearing to that of your own personal knowledge?

A: I am.

Q. Can't you tell the jury what truck they came in on?

Q. I don't know the numbers of the trucks.

Q. On the first truck-load or the second was it?

A. I think they came on the second or the third or the fourth or the fifth.

Q. What makes you think that?

A. Because about that time I had commenced to examine them to see if they had any marks of screw-holes upon them. I don't think I examined particularly the first load. Then my attention was called to it by our porter, and I examined the balance that came in.

Q. When these bales came in were they piled up with the other 13?

A. They were not piled up, they were just placed on the floor.

Q. You had nothing to tell you where in that group of bales these two bales were put?

A. No, sir.

By plaintiffs' counsel:

Q. You have seen those two bales in Mr. Augustine Smith's place?

A. Yes, sir.

Q. And you have heard Mr. Smith's testimony that these are the same bales?

A. Yes, sir.

Q. Were those the only kind of rags imported into New York at that time?

A. They were the only Japanese rags.

Q. Point out to the jury in those two bales of rags any holes that ran to any depth in them?

Objected to on the ground that the bales have not been identified, and that it is apparent that this witness cannot identify 397 them and has not.

The Court: The witness may point out to the jury any holes that he found there.

Defendants' counsel excepts.

The witness at this point examined the bale in connection with the jury.

Q. Place your finger upon any hole that exists in this bale (indicating) in which you can introduce that piece of iron.

Same objection, ruling, and exception.

A. I cannot find any such hole in this bale. I have not been able to find a hole in either of those two bales. I inserted that iron rod in the other bale. I could not insert it in these two bales. I have seen bales of this character which were alleged to have been disinfected with holes in them. The holes in those Japanese bales were just the same as the hole in this large bale. And wherever the hole had been made in those bales it appears the same as the hole in this large bale. I never saw a single bale among all those that were disinfected that showed the marks of three screws having been put in them. We sold the rags to Mr. Hamilton, the witness that came here from Philadelphia; we booked them to him and delivered them, and those rags were from the Vigilante.

Frank M. Smith, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

By plaintiffs' counsel:

I reside in Brooklyn. I am a clerk in an importing and manufacturing house, importers and manufacturers of fertilizers, castor oil, borax and saltpetre, and importers of rags and other goods. Our firm had some rags that formed a part of the cargo of 398 the Vigilante, about 3,600 bales. They went to Baltic stores. I went there to see them every day.

Q. Did you see all of the rags there that came from the Vigilante?

A. It was an entire cargo, nearly, of rags.

Q. Were they all taken over there?

A. I couldn't say that.

Q. Were the only ones that you saw your own rags?

A. No; I saw boat-load after boat-load going over the side of the Vigilante and towing across the slip to the Baltic stores. All the rags that came to the Vigilante were together there, our rags and those of other people; they were not kept separate. That part of the cargo of rags which belonged to our firm was not kept separate from the other rags that were consigned to other merchants; they were mixed up together.

Q. State whether or not the process that you saw there applied indiscriminately to all of the bales.

A. I can only say in regard to the rags that came on the Vigilante. They were rags from the Vigilante that I saw there, without any regard to particular ownership.

Cross-examined by defendants' counsel:

I made my observation in June. I do not know on what day. It was during the discharge of the ship. She was there a number of days discharging. I was there once every day during her discharge, commencing the day she commenced to discharge.

Q. Was that the day the Vigilante began to discharge your rags?

A. Any rags whatever. I can't say whether it was the 8th or the 15th or the 13th of June, 1885, or July; I am sure it was not in August. I knew our rags when they came out of the ship, but not what part of the warehouse they went into. I was there the first day, perhaps an hour, possibly two—at the ship.

399 Q. Did you go to the warehouse that day?

A. I went by the warehouse every day.

Q. Did you go into the warehouse on the first day?

A. I can't say.

Q. The second day?

A. I can't say.

Q. The third day?

A. I don't know whether it was the first, second, third or fifth day. It was during the discharge of the vessel.

Q. Did you go into the warehouse more than once?

A. Possibly, but I cannot say positively. I know I was there once, but I can't say what day that was. I stayed there then probably 15 minutes. I was in the first room, in the entrance, off the dock where the disinfecting machines were located.

Q. Were you near any one of the machines?

A. I was near two positively and perhaps three.

Q. How near were you to the nearest machine?

A. When the door of one of the machines opened I was directly in front of the door; probably four or five or six feet; the other machines were located close by, I couldn't say exactly how many feet.

Q. Your attention was directed during the 15 minutes of that visit to the machine of which you saw the door open?

A. No, sir.

Q. How much of the 15 minutes was devoted to that one machine?

A. I think during the disinfection of one bale positively.

Q. And then did you go to another machine?

A. No, I kept my position there and looked around the place the rest of the time.

Q. How large a box was this into which the bale was thrust?

A. I don't know.

Q. Can't you approximate it?

A. There appeared to be around the bale, the bale being on a hand truck probably a foot to two feet in height, and perhaps six inches to two feet on each side.

Q. When you first saw the bale was the lid of the box thrown up?

A. I don't know.

400 Q. Can't you remember that?

A. No, sir.

Q. Do you know which way the opening pointed—in shore or out from the shore, the opening where the lid was?

A. It might be both. I can't understand your question.

By the Court:

Q. The lid opened on one end where the bale was drawn in?

A. Yes, sir.

Q. Was that end towards the river or towards Brooklyn?

A. The box was parallel to the river.

By defendants' counsel:

Q. Which way did the lid opening turn—up or down river?

A. Up towards Hell Gate.

Q. And how far back was this machine from the door?

A. I do not know.

Q. Was it 100 feet?

A. No, sir.

Q. Approximate it?

A. I can't say.

Q. Was it as far as this room is long?

A. No, sir.

Q. Half as far?

A. It was not a great distance. I could stand in the doorway and see the machine.

Q. I am trying to test your memory. How far do you think that machine was from the door?

A. As I remember it, from fifteen to twenty feet; probably not over ten feet.

Q. Then, as I understand you, the door of the warehouse was facing the river?

A. Yes, sir.

Q. And the machine sat parallel with the river?

A. Yes, sir.

Q. Then the entrance of the box was toward the wall of the warehouse and not toward the open door?

A. No.

Q. Will you explain your answer then. Do you desire to make any explanation out of your answer?

A. Which answer?

Q. The answer as to the point towards which the door of the open box pointed?

401 A. As you entered the warehouse the machines were on this sides (witness indicates the right side); the entrance to the machine was facing here, and the machine was on the lower side of the door.

Q. And the door was how far away from the machine?

A. I stated before about ten to twenty feet.

Q. You say you only looked at one box?

A. I looked at all the boxes in a casual way.

Q. Were they all opened at the same time?

A. No, sir.

Q. You were not paying any particular attention to how many screws there was?

A. Yes, I was.

Q. What were you looking at in a casual way?

A. The one box I examined.

Q. Then you can only speak of the number of screws in that one box?

A. That is all.

Q. Did you see a bale put into that box?

A. I did.

Q. Whose bale was it?

A. I don't know.

Q. Did you see that bale come out?.

A. Yes, sir.

Q. And that is the length of time which you were in there—that, the time during which a bale went in and until it came out?

A. What—all the time I was there?

Q. Yes?

A. No, sir.

Defendants' counsel: I renew my objection to the witness answering Mr. Cochran's question, as incompetent, irrelevant and immaterial. Objection overruled. Defendants' counsel excepts.

Defendants' counsel: I would like to raise one further objection, and that is as to the order of this proof. It seems to me that the evidence should have been presented on their original case. I now raise the objection that it is improper for them at this stage of the case to produce this evidence. Objection overruled. Defendants' counsel excepts.

402 By defendants' counsel:

I saw one bale of rags being disinfected. It was in the box three to five minutes; one screw was put into it. That was not the only occasion I saw the disinfecting business going on. I think on one or two other occasions I stood in the doorway until I was known there, and then notified to go about my business.

Q. After you were known there you were not welcome?

A. No, sir.

Q. In all the disinfection which ever you saw going on there did you see a bale of rags with more than one screw put into it?

A. No, sir.

Defendants' counsel: I move to strike out the answer on the ground that the witness has already testified that he was there but once.

Motion denied. Defendants' counsel excepts.

Q. Do you mean to say that you were never there but once while the alleged disinfection was going on?

A. Yes, sir; I was there more than once. I was there every day about the place. I was but one time inside of the room. I saw it from an open doorway. Sometimes I visited this establishment and stood in the open doorway prior to being notified to go about my business. I saw the process going on. I could not see the number of screws which were at work. I never noticed the length of time that bales were kept in the box to time them at all. I should say I had seen them come out and go in inside of five minutes.

Q. On the occasion that you saw the bales thoroughly disinfected to the extent of four or five minutes and with one screw, did you see the other machines there?

A. They were there.

Q. Did you examine them sufficiently to know how many screws they had?

A. No, sir.

403 Q. Did you see the rags that came out of the establishment after they had been put through this process, the rags belonging to your firm?

A. Some of them; quite a number.

Q. From as far as you observe the signs of the disinfection, or the signs of screws on the bales, how many did you see?

Objected to.

The Court: Of the bales of rags that came on the Vigilante at the same time, I will allow that.

Defendants' counsel excepts.

A. But one hole. I could not see the hole plainly; we could find it by feeling for it.

Q. It closed up in handling, didn't it?

A. Not entirely; no, sir.

Q. Do you mean right away that it didn't close up?

A. I didn't see many of them that came out of the machine right away.

Q. How long did any of them that you saw remain in the store?

A. A number of months.

Q. And when it came out you say you couldn't detect the hole?

A. I did not. We could detect the hole.

Q. In every bale?

A. I didn't say every bale.

Q. Every bale that you did try?

A. Yes, sir; every bale that I tried and hunted for the hole I found it.

Q. How large a hole. Was it like an auger hole in a piece of wood, clear and distinct?

A. No, not as clear and distinct, but still it was there.

Q. Could you see the ragged edge around the hole?

A. Occasionally there would be torn rags.

Q. Is that all you could see?

A. Yes, sir; I could put my finger in it.

Q. You don't know the time when you saw this process going on whether it was in June or July?

A. No, sir; nor do I know how many machines were erected in the disinfecting-room at the time I saw them. I will not swear
there were three, but I will swear there were two. I am not
404 sure whether there were more than two. These boxes were
made of iron, the boxes in which the bales went; all of
those which I saw were made of iron. I am sure of that.

Q. Positive?

A. If I know iron; yes, sir.

Q. You do know iron?

The Court: It had the appearance of iron?

The Witness: Yes, sir; it had the appearance of iron.

Q. You know what iron was?

A. Yes, sir.

Q. Now, I ask you if you will swear they were made of iron?

A. I will swear that they had the appearance of iron.

Q. What was the screw made of?

A. I didn't have hold of it. I only saw it in the box.

Q. You were standing right in front of it?

A. Not inside of it. I would have to put my hand in to get hold of it.

Q. I asked you if you were standing in front of the box all the while?

A. No, sir.

Q. But you will swear positively that in the machine you saw, there was only one screw?

A. I will.

Q. How long was that screw out from the back of the box?

A. I don't know. I couldn't tell exactly.

Q. Did you see the whole length of the screw?

A. Not that I know of. It wasn't as long as that (indicating the screw already produced in court).

Q. How long was it?

A. I don't know. There was steam all around it and I couldn't see.

Q. Was the box full of steam when you saw it?

A. There was steam about the room and in the box, and the screw was in the steam.

Q. The box was full of steam?

A. No; but there was some steam in the box.

Q. The room was full of steam?

A. No, sir; not entirely. There was some steam about—that is the reason I didn't stand right up in front of the box. After the door had been opened a moment there was very little steam.

405 Q. When the door opened where was the screw?

A. The screw came from the back of the box.

Q. How far out was it from the back of the box?

A. I cannot say. I can't say whether it was half way out from the back of the box. It was two inches out from the back of the box. I don't know how many inches it was.

Q. How could you tell that there was one screw, if you can't even tell the jury how far that screw had run out from the back end of the box?

A. The screw was out far enough to be easily discerned when I looked at it; there was some steam in the box. The steam was nearly all escaped when I saw the one screw.

Q. Had the steam escaped enough to let you see how much of the screw was projecting from the end of the box?

A. No—yes, I think it did.

Q. Well, which do you mean?

A. I think, if it had been a point in my mind, that I could have told within a few inches of how long it was. My memory is not fresh on that point. I can't tell how much of this screw was projecting from the back of the box when I saw it, whether it was two inches or ten inches.

Q. And yet you undertake to swear that there was only one screw there?

A. There was only one screw.

Q. Is your memory as to distance better than it is to time?

A. No, sir.

Q. And when you say that these bales were in the box from three to five minutes you are forming an estimate of the time?

A. No, sir; because that point was not asked me on my coming back to the office.

Q. When was your attention first called to this matter, to the subject of the testimony which you have given today?

A. At the time it was being done over there.

Q. And since then, when?

A. I think three or four days ago.

406 Q. And how long ago is it since this experiment occurred—in the summer of 1885?

A. Yes, sir.

Q. Did you make any memorandum of the time?

A. No, sir.

Q. Or the length of time it occupied, or the size of the screws?

A. I have no memory of any experiment. What do you mean by that?

Q. Did you make any memorandum of anything you saw there?

A. No, sir. I came over and talked it over.

Q. And for nearly two years your attention has not been called to the subject?

A. Yes, sir; it had.

Q. Well, I asked you that question before?

Objected to as immaterial.

(By the Court:)

Q. When was your attention called to it?

A. The subject has been talked over in our office on many occasions since then.

Q. Before you testified that your attention had not been called to it until within three or four days before this present time?

A. The subject has been talked over on many occasions since the discharge of the cargo. I have talked upon this subject within three or four days with my employer, C. Breaker, Jr., in our office, last week. He did not tell me that I was to be a witness here. I don't remember when I talked with any one before that. I can't remember any person that I talked with before the time that I speak of when I conversed with Mr. C. Breaker. Not a single person. And I will swear that I have been talking of it at intervals since the occurrence. I have talked with Mr. Lockwood since I talked with Mr. Breaker. And that was preparatory to being examined as a witness.

Q. You spoke of these bales being in the store a considerable time. Was it two years?

A. No, sir.

Q. How long was it?

A. I don't know; some months.

407 Q. Did you see them while they were in the store?

A. No, sir.

Q. When was it that you examined to see if there were any holes in the bales; was it before or after they were put in the warehouse?

A. After they came out of the warehouse. It was after the expiration of some months.

Q. Do I understand that you found some bales in which there was no appearance of a hole?

A. I did not say so.

Q. I ask if that is so.

A. No, sir.

Q. Did you not say that there were some bales in which there was no appearance of a hole until you searched for it?

A. Yes, sir.

Q. As a fact until you did hunt for it you did not find it in some of the bales?

A. I could find it: sometimes it would be on the other end, and I would have to turn the bale over. That is what I went hunting for.

Q. Was not the aperture sometimes covered by broken rags or pieces pulled out?

A. Not enough to cover the hole up entirely. You could run your finger in.

Q. You spoke of the length of time that you watched this experiment. Was it with watch in hand, or was it an estimate?

A. An estimate.

By the seventh juror:

Q. How many of these bales did you see with holes in them?

A. I cannot say. We had 3,600 bales, of which I saw 2,500 go away.

Q. How many did you examine and stick your finger in?

A. Probably twenty or thirty.

Q. Did you do it out of curiosity?

A. Yes, sir.

Q. It made no particular impression on your mind?

A. We had been through the disinfection, and at times I would wonder where the hole was, and I would look for it.

(By defendant's counsel:)

Q. How many bales do you think you examined to find the hole?

A. I told the jury twenty or thirty.

408 Q. How many bales did you examine to see if there was a hole in them and found none?

A. I cannot say whether I found none.

Q. Several hundred, I suppose?

A. I cannot say so.

Q. How many?

A. I don't know.

Q. Quite a number?

A. No, sir.

Q. Didn't you examine bales in which you found no hole at all?

A. No, sir.

Q. None?

A. No, sir.

By the seventh juror:

Q. Did you find any holes which were off the center of the bale?

A. No, sir.

Q. Were they all in the center?

A. Yes, sir.

By defendants' counsel:

Q. I understood that every one that you examined you found a hole in?

A. Yes, sir.

AUGUSTINE SMITH, recalled by the plaintiffs.

By plaintiffs' counsel:

There is the bale that came into court this morning (indicating). I got it from Mr. McClintock at the same time that I got the other two bales that have been identified. And it has been in my possession ever since.

By the Court:

Q. Is it in the same condition now that it was when it came into your possession?
A. Precisely, sir.

Plaintiffs' counsel: I object to the last two questions and answers and move that they be stricken out.

Objection overruled and motions denied.
Defendants' counsel except.

409 By defendants' counsel:

Q. Has that bale been under your eye all the time?
A. No, it has not.
Q. You are a very large dealer in rags?
A. Yes, sir.
Q. How many bales are passing in and out of your store?
A. Very few.
Q. Are you a stockholder in the New York Times?
A. No, sir.
Q. Have you an interest in the New York Times?
A. No, sir.
Q. Have you ever had?
A. No, sir; never.

By plaintiffs' counsel:

Q. You never owned stock in a rag-disinfecting company, did you?
A. No, sir.

EMORY W. MCCLINTOCK, recalled by plaintiffs.

By plaintiffs' counsel:

I saw that bale which Mr. Smith has just identified; it was part of the cargo of the Vigilante and was sent to us; that was a part of the goods delivered by us to Mr. Smith after it had gone through the mill, so to speak, over in the Baltic stores.

Q. Are you able to discover in that bale of rags any sign of the industry of the disinfector?

Defendants' counsel: We make the same objection; if there is going to be an examination of this bale it should be made by the jury instead of the witnesses stating anything about it.

Q. Is there a hole in that bale?
A. Yes, sir.

Q. Can you point it out to the jury?
A. Yes, sir.

Defendants' counsel: We make the same objection, and except.

The witness examines the bale and points out to the jury the hole in it.

410 By the fourth juror:

Q. I want to know if you found only one hole in every bale that you examined?
A. That is all; one hole.
Q. Did you find any bales without holes?
A. Yes, sir.

By plaintiffs' counsel:

Q. In any of the bales did you discover more than one hole?
A. I did not; there was not more than one hole in each of the bales; twenty per cent. had holes.

By defendants' counsel:

Q. In what part of the bale did you find the hole?
A. About the same position as in that, and it was towards the center.
Q. A little to one side of the center?
A. Rather nearer the center usually than that.
Q. In this the hole is further from the center of the bale than you usually found it?
A. Very likely it is.
Q. And in this bale there is room between the place where that hole is and the center of the bale for another hole, isn't there?
A. That depends upon how near the screws are apart.

By the Court:

Q. Is there room in that bale for another hole there?
A. Yes, sir; I think there was.

Plaintiffs' counsel: With the exception of calling Mr. S. Weber Parker when he comes in, we rest.

Defendants' counsel: I move that all the evidence taken this morning as to the number of screws and the manner in which the disinfection was performed be stricken out on the ground that if there was fraud for which the defendants, and especially the defendant Smith, was at all responsible, and it is not material 411 to the issue, but if a fraud at all, it was fraud on the part of the Paper Stock Disinfecting Company.

The court denies the motion, and defendants' counsel except.

Plaintiffs' counsel: I will put in evidence the articles of incorporation of the New York Disinfecting Company, dated May 29, 1885.

Marked Plaintiffs' Exhibit Z, April 27, 1887.

S. Weber Parker, called as a witness on behalf of the plaintiffs, being duly sworn, testifies as follows:

By plaintiffs' counsel:

Q. You were one of the organizers of the Paper Stock Disinfecting Company?

A. No, sir; I was one of the members after the organization.

Q. Were you not one of the organizers of the incorporation?

A. I may have been.

Q. Do you know whether you were or not?

A. I could not say.

Q. Have you the books of the company with you?

A. The stock book and the minute book, and the minute book of the Paper Stock Disinfecting Company.

The witness produces and hands to plaintiffs' counsel the stock book and the minute book of the Paper Stock Disinfecting Company.

The Witness: Your honor, I ask for the protection of the court under this subpœna about these books. The counsel here are looking through these books and I don't think they have any right to inspect them.

By the Court:

Q. Can you state the names of the stockholders without the stock book?

A. The stock ledger will show that, and I have sent for it.

412 Plaintiffs' counsel: Well, I offer both these books in evidence. The book which I hold in my hand is the book containing the original certificates of stock.

The Witness: Yes, sir.

By plaintiffs' counsel:

Q. Look at the page which I now show you. This stock began to be issued on November 25th or 24th, judging from the first of those certificates.

Objected to as immaterial and irrelevant; objection overruled; defendants' counsel excepts.

A. Yes, sir; the stock commenced being issued on November 24th, 1884.

Q. And on the 25th a large amount of stock was issued by the company?

A. The whole amount of stock was issued on the 24th.

Q. To whom was it issued as it appears there?

Same objection, ruling and exception.

A. It was issued to the patentees of the disinfecting apparatus.

Q. State the names of the parties.

A. Henry Blackman and S. Weber Parker.

Q. In what proportion?

A. One thousand shares to Henry Blackman and four thousand to S. Weber Parker. That was the total stock of the company.

Q. Look under date of November 25th and see if one block of 200 or 250 shares was not issued to E. B. Bartlett on the 25th of November.

Defendants' counsel: I produce the certificate of the shares of stock called for by the question (handing papers to plaintiffs' counsel).

Witness continuing: No. 10 was issued November 25th. On the
stub it appears to be 250 shares. There is an erasure there.
413 That was intended for 250, and this is the certificate of stock
corresponding to that stub.

Plaintiffs' counsel puts the certificate of stock in evidence, and the same is marked Plaintiffs' Exhibit AA.

Witness continuing: The par value of the shares was $100, yes, sir.

Plaintiffs' counsel: I call for the balance of this issue of stock.

Defendants' counsel: Those are not in the name of Mr. Bartlett, but they are in the name of George Howland, one of E. B. Bartlett & Co.'s clerks.

Plaintiffs' counsel: Who is George Simpson?

Defendants' counsel: He is another clerk.

Q. What day was that first certificate issued on?

A. November 25th.

Q. What is the meaning of the word countersigned up there?

A. Countersigned by the loan and trust company. That would indicate the date that it was registered there at their office.

Q. On the 25th you say the certificate of stock which bears his name was issued to E. B. Bartlett?

A. On the 25th.

Q. I show you now stock certificate No. 78. To whom was that issued?

A. That was issued to George Howland.

Q. Did you know who George Howland was at the time he issued it?

Defendants' counsel: We will concede that he was a clerk for E. B. Bartlett & Co.

Q. Certificates 78, 79 and 80, being respectively for 50, 150 and 50 shares of the stock were issued on the 26th day of December; certificate No. 78 to George Howland; certificate No. 79 to George
Howland, and certificate No. 80 to George Simpson. These
414 were issued on the 26th day of January, 1885?

A. It would appear so. I did not issue them.

Defendants' counsel: We concede that as their date.

Q. They were issued to the persons named in the certificates for and on account and for the benefit of E. B. Bartlett?

A. Yes, sir.

Plaintiffs' counsel puts the certificates in evidence, and they are marked Plaintiffs' Exhibits B B, C C and D D, respectively.

By the seventh juror:

Q. Was that all the stock issued to Mr. Bartlett?
A. So far as I know.

By defendants' counsel:

Q. Was any of that stock issued to Dr. Smith?
A. No, sir.

The seventh juror: Does that make the 500 shares?

Plaintiffs' counsel: That makes 500 shares that were issued to Mr. Bartlett.

(By plaintiffs' counsel:)

Q. Are there any other shares in that book issued to Mr. Simpson or to George Howland?
A. No, sir; not that I know of.
Q. Have you looked to see?
A. No, sir.
Q. Are there any other shares issued to any other person on account of Mr. Bartlett?
A. No, sir; that is all.
Q. Now, have you got your book of minutes there?
A. Yes, sir.

Cross-examination by defendants' counsel:

I first became acquainted with Dr. Smith somewhere about the time of the test at Centre street. I did not know him then.
415 I first saw him, I think, on the ferry-boat between here and Staten island. I went to request him to attend this test at Centre street. He did. I sent a young man to him before that for the same purpose. I don't remember when I had my next interview with Dr. Smith after the Centre-street test; I think it was at the test made by Mr. Bartlett at the Union stores. I had no conversation with Dr. Smith upon any other subject except the sufficiency of the test at that place or at Centre street. I think I next saw him once at the Baltic stores at an examination, but I am not sure. I wouldn't be positive as to that. I don't remember any other interview with him. I never had any conversation with Dr. Smith in regard to any benefit which might fall even to him or to Mr. Bartlett, or to any other person except myself, from the use of this process and machine, in any shape or manner. Dr. Smith had no interest in the patent, in the process, in the Paper Stock Disinfecting Company, or in any other company which had the use of this process. I never made any offer to Dr. Smith that he should become interested in the process; nor did I hold out any inducements to him that he should recommend this process. I have met Mr. Bartlett frequently in the past ten or twelve years. I think in November, 1884, for the first time on this particular subject, I explained the patent process. I don't remember the discussion.

Q. Before that you had been in communication with the Treasury officials for the purpose of securing the employment of your process for disinfecting rags?

A. I don't remember whether it was before that or not. I met Judge French in connection with ex-Gov. Boutwell and Mr. McClintock for that purpose.

Q. With Mr. McClintock?

A. Yes, sir.

Q. For what?

A. They wished to have it adopted.

Q. Who wanted it adopted?

A. Mr. McClintock.

416 Q. Did Mr. McClintock want some of the stock?

A. He did.

Q. Did he demand some of the stock?

A. He did.

Q. Will you state that interview?

A. He demanded 10,000 dollars of the stock.

Q. State the conversation.

A. There were several conversations about it.

Q. State the conversation when he demanded that stock of you.

A. He demanded it at the hotel in Washington, and he demanded it again at an examination of the machines in the Baltic stores.

Q. When was the interview in Washington?

A. At this time I speak of. I don't remember the date. It was in November sometime, I think.

Q. What was Mr. McClintock to pay for this stock?

A. Services.

Q. He didn't offer to buy it, did he?

A. No, sir.

Q. Did you give him the stock?

A. I did not.

Q. Why?

A. Because he took an arbitrary course to get it.

Q. How did you come to give the stock that you gave to Mr. Bartlett to Howland and Simpson?

A. I gave it to him for his assistance in such manner as I might wish and the use of his stores.

Q. Had you been in the habit of having large dealings with Mr. Bartlett?

A. I had.

Q. State the conversation with Mr. McClintock in regard to that $10,000 of stock.

A. He said that he had ex-Gov. Boutwell as his counsel in Washington.

Q. Did he speak of him as a lobbyist?

A. Not particularly, but as his counsel, to look after these matters, and that he could give me great assistance there in regard to our patent.

Q. Who is Mr. Boutwell?

A. Ex-Gov. of Massachusetts.

Q. A prominent politician, is he not?

A. Yes, sir.

417 Q. What did Mr. McClintock say that he was doing in Washington?

A. Trying to get the embargo broken so as to bring rags in which they wished to deliver on contract.

Q. At that time which order was in vogue—the one of December 22d or the one of August?

A. The one of August.

Q. Which forbade the importation of rags under any circumstances?

A. Yes, sir.

Q. That, you say, Mr. McClintock told you he had employed Mr. Boutwell at the Treasury Department to have revoked?

A. Yes, sir.

Q. State what he said.

A. He said he would tip over my apple cart in this disinfecting business unless I gave him the stock. That was the language he used.

Q. Did Mr. McClintock say anything about establishing a plant at Philadelphia and Baltimore?

A. Yes, sir; he wrote me requesting me to do so.

Q. Requesting you to do what?

A. To establish plants at Philadelphia and Baltimore.

Mr. Cockran: Where is the letter?

The Witness: Here it is (producing paper and handing same to Mr. Goodrich).

Mr. Goodrich: I offer this letter in evidence.

Admitted, and marked Defendants' Exhibit 57.

Witness continuing: I had several conversations with Mr. McClintock in regard to that letter afterwards; he said he had rags that he could purchase, as I understood it, arriving at those ports. That was his statement, that he could purchase rags arriving at Philadelphia, and he wanted to know if we would put up a plant there for that purpose so as to allow him to admit them into those ports—Philadelphia and also Baltimore. I think that conversation was about the date of this letter.

418 Q. Did he tell you anything about erecting a plant for the purpose of carrying out your process of disinfection as to rags landing in those cities?

A. Yes, sir.

(By the court:)

Q. What did he say on that subject? Have you stated the substance of what he said?

A. Yes, sir; a portion of it; there was a good deal of conversation, I can't state it all. He said that if all the goods were brought in and disinfected that it would be a matter of large gain, so far as jute butts and other paper stock was concerned that were to be delivered; also there was talk about Japan rags, for which he had a customer, he said, in Philadelphia, and I would like to deliver them there direct. He talked of general disinfection for all rags. I appeared with Mr. McClintock at the Treasury Department when there was an attempt made to revoke this order which forbade the importation of rags.

(By defendants' counsel:)

Q. In what respect did he want that order changed?

A. Judge French brought up the question of the expense of disinfection. His argument was that it was very little difference even if it cost eight dollars per ton, as the present price for the only process known outside of this patent was costing some $15 to $20 per ton for disinfection.

Q. Was the price of this patent process stated to be $5?

A. I agreed that it should be $5 at that time.

Q. Did Mr. McClintock make any objection to that; did he dissent from it?

A. No; he said that was fair, even up to eight dollars; he said he would be perfectly willing if they could get their rags in at eight dollars per ton; I was familiar with this process, naturally, and with the rag trade. I saw the machines erected at the Baltic stores; there was no valve in the box by which steam could escape into the chamber without passing through the bale of rags; there was no valve anywhere in the chamber except to the perforated screws. I saw them operating on the rags from the Vigilante. I was
419 there several times; I was there daily, and I saw the ma-
chines operating upon those rags. There were five machines beginning with the one next to the door, that had three screws in. The next one was an iron box and had one screw in it. The others were all wooden boxes, and they had three screws each. There was one iron box with one screw; that was the furtherest from the door.

Q. Will you tell the jury what the capacity of that screw was as compared with the screw here in court?

A. I did not do it without figuring as to the opening.

Q. Was it considerably larger than that?

A. I think the opening of one will give as many superficial inches as the three of this, or perhaps a little more.

Q. Was this machine sent over there for any special purpose?

A. Yes, sir; the one screw between was.

Q. That you call an iron machine?

A. Yes, sir.

Q. You say the screw in this machine had a superficial area of about three times the superficial area of the screw here in court?

A. That is my recollection.

(By plaintiffs' counsel:)

Q. Are you a machinist?

A. I am an engineer.

Q. By profession?
A. Yes, sir.

(By defendants' counsel:)

Q. Compare the amount of steam which would be passed through that screw as compared with the screw in court.

A. It would be a matter of girding. I should say at least three times.

Q. Why was this one-screw box built of iron?

A. For the purpose of putting a much heavier pressure on. That was one purpose; speed was another. There was no method in that box by which steam could pass into the open of the box except through the bale. There was no way in any of them by which any steam could get in except by passing through the bale from the inside outwardly. I have seen the pyrometer, and I am familiar with those instruments. That is one in ordinary use (indicating). So far as I know, and as far as my experience with those machines goes, that is a correct measure of heat. In the construction of the box no steam could affect that until after it had passed through the bale.

Q. Look at the paper which I now show you (handing paper to witness) telling me first who is W. H. Shelp?

A. He is the secretary of the Paper Stock Disinfecting Company, which did the work of disinfecting these rags by the Vigilante.

Q. Did you enclose the two bills for that purpose which I now show you, and which are marked Defendants' Exhibits 32 and 33 in that letter (showing papers to witness)?

A. Yes, sir; they were made out by Mr. Shelp.

Defendants' counsel puts the same in evidence, marked Defendants' Exhibit 58.

Q. Noticing the fact that Exhibits 32 and 33 are made out general orders to the New York Disinfecting Company, will you state whether you are still positive that the work was done by the Paper Stock Disinfecting Company, and how it happened that the bills were made out by the New York Disinfecting Company?

A. By assignment of account, I think.

Plaintiffs' counsel: Do you know?

The Witness: I didn't keep the books.

Plaintiffs' counsel: Then I object to the testimony.

The Court: Was the assignment in writing?

The Witness: I think it was.

Plaintiffs' counsel: Then I move to strike out his testimony as to the transfer of the account to the New York Disinfecting Company.

The Court: Yes; strike it out.

Defendants' counsel excepts.

Q. Are you still connected with the Paper Stock Disinfecting Company?

421 A. Yes, sir. I have sued E. B. Bartlett & Company, as officer of the company, in the name of the Paper Stock Disinfecting Company; the summons and complaint in the action dated about a year ago, July 20, 1886; that suit was commenced by Paddock & Cannon, our attorneys; our company, The Paper Stock Disinfecting Company, was the defendant in a suit brought against you and the collector of the port by Lockwood & McClintock; I can't remember whether that injunction order was served upon me or the company.

Q. Did you have knowledge of it when it was served?

A. Yes, sir.

Q. Did you have some arrangement with Collector Robertson or his subordinate in June, by which you received information of the arrival of rags by examination of the manifests.

Objected to; objection sustained; defendants' counsel excepts.

The Court (to the witness): Did you receive these two letters from the collector?

A. I did.

The letters referred to are marked Defendants' Exhibits 59 and 60 for identification.

Defendants' counsel: I now offer the letters in evidence.

Excluded; defendants' counsel excepts.

Q. Did you have any communications besides these letters with the collector in regard to the arrival of rags and a notice to you?

A. Yes, sir.

Q. What was the arrangement?

Objected to. Objection sustained. Defendants' counsel excepts.

Q. Were there any other gentlemen present at the interview with Assistant Secretary French, at the time Mr. McClintock was present?

A. Ex-Gov. Boutwell was there and Scott Smith, but no
422 man engaged in the rag business. I had a conversation with Mr. Bartlett in regard to Dr. Smith, in regard to rags. I don't know that I can state all the conversation which I had with Mr. Bartlett upon that subject. I don't remember any distinct conversation. I asked Mr. Bartlett to use his influence with Dr. Smith in this connection. He said it wouldn't do me any good; he said he had no influence with Dr. Smith that would assist me in that way.

Redirect examination by plaintiffs' counsel:

That was about the time we got our plant set up. It was not, I think, about the time I gave him the first of the stock.

Q. What general assistance did you want from Mr. Bartlett, when you gave him 250 shares of stock?

A. The same assistance that a man would receive from an attorney.

Q. Did you regard him as a professional, so to speak?

A. No; but I regarded his advice as worth having.

Q. And so you gave him 250 shares of stock?

A. Yes, sir.

Q. What advice did you want at that time?

A. Locating a place; getting stores that would be a place admissible for lighters, and making things as convenient as I could for my interest in the rag trade. I don't remember how long he advised me on that.

Q. Did he advise you for the 250 shares?

A. There was no particular giving of it for such purpose.

Q. You gave him 250 shares on the 26th of November, and, as you have testified here in answer to Mr. Goodrich, you gave it to him for his general assistance. Now you tell me that involved advice. I ask you what advice, and you tell me it was for locating the plant. Did he give you any other advice for that 250 shares of stock?

A. I don't remember that he did.

423 Q. Did he give it to you generally?

A. He gave it to me, generally, I believe.

Q. Was it about this time that he told you he had no influence with Dr. Smith?

A. I don't think it was.

Q. How much later?

A. I think when we had our plants running.

Q. You had your plant over there in the Baltic stores on the 9th of January?

A. I think some time in January.

Q. Wasn't it immedietely after the test was made?

A. The test was made at the Union stores.

Q. Then you immediately moved your plant into the Baltic stores?

A. As soon as it could be.

Q. And you got your plant going, and the 250 shares that you gave to Mr. Bartlett was for advice in picking out that place?

A. I don't say it was entirely.

Q. What else was it for?

A. I don't remember anything special.

Q. Did you give it to him in a fit of abstraction?

A. I suppose I must have.

Q. That is the best answer you can give us as to the first 250 shares, is it?

A. I think the answer I have given you is the best that I can give.

Q. That you wanted his general advice as to where to locate your plant?

A. Yes, sir.

Q. Give us any other reason than the one I have mentioned which induced you to give 250 shares to Mr. Bartlett and to pass myself and Mr. Goodrich by?

A. I thought his assistance would be worth more to me than yours.

Q. And you found it so, I hope?

A. Yes.

Q. In the month of January you gave 50 shares to a man named Howland?

A. Yes.

Q. What was that for?

A. I wished Mr. Bartlett to become a director in the company.

Q. How would 50 shares given to Howland assist Mr. Bartlett to become a director?

A. It was given with his permission, I believe.

424 Q. Why, if the object was to make Mr. Bartlett a director?

A. I had no special reason.

Q. Why did you do it?

A. I have no objection to whose name it went.

Q. Why did you select the name of Howland?

A. I didn't.

Q. Who did?

A. Mr. Bartlett.

Q. Did you ask Mr. Bartlett why he selected the name of Howland instead of the name of Bartlett?

A. I did not, because it made no difference to me.

Q. You were giving this stock to Mr. Bartlett?

A. Yes, sir.

Q. Did you ask Mr. Bartlett why he wanted you to make out that stock in another man's name?

A. No, sir.

Q. You made out another certificate in the name of Mr. Howland?

A. I knew these were his employees.

Q. And you made out another certificate for 150 shares to a Mr. Simpson?

A. Yes, sir.

Q. And you still didn't ask Mr. Bartlett why he didn't want that stock in his own name?

A. No, sir.

Q. You gave him that stock so as to get him to become a director?

A. Yes, sir.

Q. And yet you were putting it in somebody else's name, so that upon your books it did not appear to belong to Mr. Bartlett at all?

A. There was sufficient on the books to cover the fact of his being a director and making it legal. That is all I cared for.

Q. The books of that company did not show that Mr. Bartlett owned over 250 shares?

A. That was quite sufficient for my purpose.

Q. (Repeated.)

A. So far as it shows here today; yes, sir.

Q. Does it require any particular number of shares to be a director?

A. One, I think.

425 Q. And then you say after giving his 250 shares you gave him 250 more, nominally to Mr. Howland and to Mr. Simpson, so as to enable Bartlett to become a director?

A. I didn't say that.

Q. So as to induce him to become a director?

A. Yes, sir.

Q. Did he say that he wouldn't become a director unless you did?

A. No, sir.

Q. Why then did you say it was given to him to induce him to become a director?

A. It was to make it sufficiently an inducement so as to cover his time.

Q. It was done to induce him to devote sufficient time to the company to become a valuable director?

A. Yes, sir.

Q. Now, did you send W. Scott Smith to see Dr. Smith?

A. No, sir.

Q. Did your company?

A. They may have.

Q. Who was the young man that you sent to see Dr. Smith in the first instance, who had such hard luck?

A. I think it was one of the office boys.

Q. Don't you remember his name?

A. Joseph McCormick. I think he is working now for F. Beard & Company.

Q. How old a boy was he?

A. About 21, I think—21 or 22.

Q. Where are F. Beard & Company?

A. On Fulton street.

Q. You sent him to see Dr. Smith?

A. With a message.

Q. Not even a letter?

A. No.

Q. You never knew Dr. Smith?

A. No.

Q. And he didn't?

A. No.

Q. And you had this machine patented, and was anxious to have it put in operation?

A. Yes.

Q. And you considered Dr. Smith's approval a very necessary thing?

A. We wished his sanction of the efficacy of the machine.

Q. Did you consider it of great importance to the prospects of the machine that Dr. Smith should approve it?

426 A. Not materially. I say not materially, as the rule came from the Treasury Department at Washington, and not from Dr. Smith.

Q. Didn't you know that the Treasury Department was in consultation with local health officers about what means to take for disinfection?

A. Yes, sir.

Q. And didn't you consider Dr. Smith's report of great importance as governing the action of the Treasury Department?

A. I did not think so.

Q. Why then did you send after Dr. Smith at all?

A. I wished to have a fair examination of the machine by all medical men that were interested in sanitary methods.

Q. Didn't you consider the approval of a man holding Dr. Smith's position of importance?

A. I didn't consider that he issued the orders; therefore it was not so material to me what he thought as it was what Judge French thought about it.

Q. Did you go to Washington at that meeting of health officers?

A. I did.

Q. Dr. Smith was there?

A. Yes, sir.

Q. And you had several conversations then with officers of the Treasury Department?

A. I had some conversation.

Q. This was in December?

A. Yes, sir.

Q. Was Mr. Bartlett there with you?

Q. I think I met him in Washington, but he was not there with me.

Q. Was Dutcher there?

A. I don't remember that I saw him.

Q. Do you know him now?

A. Yes, sir; I know him now.

Q. You don't remember whether you saw him there or not?

A. No, sir.

Q. You went to see Mr. French several times?

A. I did.

Q. Didn't you know that the action of the Treasury Department was of vital importance to the prospects of your machine?

A. Certainly.

427 Q. And you knew it was by the regulations which they could adopt which would make your machine profitable to you?

A. Yes, sir.

Q. And didn't you consider the action of Dr. Smith as likely to affect the action of the Treasury Department?

A. I did not.

Q. Did you not consider that Dr. Smith's view as to the efficacy of this machine would have considerable effect upon the prospect of your invention?

A. It will have a certain amount of effect, that the opinion of one health officer on anything of that kind would have.

Q. You took a great deal of that stock, 4,000 shares to yourself?

A. I did.

Q. To whom did you distribute that?

A. I don't remember.

Q. Was any of that stock given to Dr. Hamilton?

A. No, sir.

Q. You say Mr. McClintock demanded some of the stock?

A. I do.

Q. Will you swear that you never offered him any?

A. I will swear I refused to give it to him.

Q. (Repeated.)

A. No.

Q. You said that Mr. McClintock said that Mr. Boutwell was a very influential man there, and that he would upset your apple cart?

A. Yes, sir.

Q. And you also said you knew Mr. Boutwell to be a prominent politician. Do you know of any position that Mr. Boutwell has held within the past ten years?

A. I never met ex-Gov. Boutwell until at this interview.

Q. (Repeated.)

A. I understood Mr. Boutwell was in Washington and engaged there.

Q. Do you know of Mr. Boutwell having voted in the last ten years?

A. I knew he lived in Washington, and, therefore, was not entitled to vote.

Q. Do you know of his having voted for ten years?

A. I don't know that he ever voted.

428 Q. Why did you say he was a prominent politician?

A. Because I have often heard him spoken of, and read about him in the newspapers.

Q. Have you heard or read of his holding any office or taking any part in political affairs for the past ten years?

A. I can't state any time.

Q. You said that Mr. McClintock wrote you a letter in which he stated that if he could get some of that stock he would be willing to bring him some rags?

A. I did not state that.

Q. Do you consider that this letter bears any such construction?

A. I never said it did.

Q. Don't you know that February 22, 1885, the importation of all rags without disinfection was prohibited by the Treasury Department?

A. Yes; I believe it was.

Q. This letter says: "Will you be prepared in March to disinfect rags landing in Philadelphia and Baltimore? If so, we will probably order some shipment made that will arrive there during that and following months of this year." Was there any way in which they could have got in any rags without going through your process?

A. There were four separate processes—either of the four.

Q. Was there any process in vogue, or in use, in this country at that time except yours?

A. No, sir; except breaking open and fumigating.

Q. Was there any other process known?

A. Yes, sir.

Q. Breaking open and fumigating?

A. Yes, sir.

Q. You mean breaking open the rags and separating them all?

A. Yes, sir.

Q. Such a process would render it practically impossible to distribute them for the ordinary purposes of commerce?

A. It would cause delay.

Q. Was there any practical means known and in operation except the process you controlled at the time that letter was written?

A. That and fumigation.

429 Q. But fumigation was almost impracticable owing to the expense and delay?

A. I had a cargo fumigated, so that I know the expense of it.

Q. When?

A. In the previous year.

Q. At this time, was there any process of fumigation known except the one you controlled—disinfecting in the bale?

A. No, sir; not in the bale, because that is covered by our patent.

Q. In order to get that stock into any of those ports it was necessary that arrangement should be made with you to disinfect them?

A. I suppose it was.

Defendants' counsel: I offer in evidence now a letter of the Secretary of the Treasury, dated November 15, 1885.

Marked Defendants' Exhibit 51, and read to the jury.

Q. Who made the arrangement with Bartlett & Company on behalf of the disinfecting company?

A. What arrangement?

Q. To pay Bartlett & Co. $1.50.

A. My impression is the president of the company, Oliver L. Gardner.

Q. Did you have anything to do with it?

A. I don't think I did.

Q. Did you have any talk with Mr. Bartlett about it?

A. I presume so.

Q. The matter was fully discussed between you?

A. As a business question; I think so.

Q. How did the Paper Stock Disinfecting Company reach the conclusion that it was wise to turn over its license to a certain Mr. Berry?

Objected to as immaterial; objection overruled; defendants' counsel excepts.

A. I don't know.

Q. Did you have anything to do with it?

A. I may have; I don't remember.

Q. Do you remember about the conference in April, 1885, at the Fifth Avenue hotel, of medical men?

A. I may have heard of it.

430 Q. Was W. Scott Smith the counsel of your company at that conference?

A. No, sir.

Q. Was he an agent of your company?

A. He was a member of the company.

Q. How much stock did he hold?

Same objection, ruling and exception.

A. 250 shares.

Q. Who gave it to him?

Same objection, ruling and exception.

A. I believe the company gave it to him.

Q. Did you give it to him?

A. I don't remember.

Q. Can't you look that matter up?

A. I haven't the papers here.

Q. Do you mean to say that you can't remember whether you gave away 250 shares of stock or not?

A. I don't remember. I gave him a portion of it.

Q. Was it a part of your 4,000 shares?

A. A portion of it.

Q. What portion?

A. I don't remember without looking.

Q. How long would it take you to look?

A. I can't say.

Q. Do you know a man named Albert Brewer?

A. Yes, sir.

Q. Where is he?

A. I don't know where he is at present.

Q. Do you know who he is?

A. I think he is connected with a chemical company in Seventeenth street.

Q. Has he anything to do with the Bartletts that you know of?

A. No, sir.

Q. He was one of the incorporators of the New York Disinfecting Company?

A. I believe so.

Q. Do you know that he is connected with a chemical company?

A. I know that some time in 1885 he went to Europe, and has returned since, but I have had no connection with him since.

431 Q. The Paper Stock Disinfecting Company, of which you owned 4,000 shares, and of which you were one of the incor-

porators, turned over to this company its account and claims and the right to disinfect with this patent gotten up by you and Mr. Blackman?

A. Yes, sir.

Q. And can't you tell me who the man is any more fully than you have as one of the incorporators of the new company?

A. I think that covers it.

Q. You say you have seen him several times, and you think that covers who he is?

A. I don't know where he was born.

Q. Do you know John W. Holmes?

A. I do.

Q. Who is he?

A. He lives in New York.

Q. What is his business?

A. At present he is superintendent for me.

Q. Superintending what?

A. Looking after my real estate.

Q. Who is William Henry Shelp?

A. I stated that.

Q. Who is Alexander Carroll?

A. He is a man that lives in New York also.

Q. Do you know anything about him?

A. No.

Q. Did not the company turn over the plant and the right to use it to the New York Disinfecting Company?

A. They leased the right.

(By the Court:)

Q. Did they lease the plant, the machinery?

A. Yes, sir.

(By plaintiffs' counsel:)

Q. Have you any stock in this company?

A. Yes, sir.

Q. What is the total stock of this company?

Objected to. Objection overruled. Defendants' counsel excepts.

A. $60,000.

Q. 600 shares of $100 each?

A. Yes, sir.

Q. How much of that do you own?

Same objection, ruling and exception.

A. I own 15,000 dollars of it.

432 Q. Is E. B. Bartlett a shareholder there?

A. I think he is.

Q. To what extent?

A. I don't remember.

Q. Is Mr. Carroll, your superintendent, a shareholder?

A. Yes, sir; he owns one share.

Q. Do you know whether Mr. Bartlett paid anything for his stock?

A. I don't know anything about his stock in that company.

Recross by defendants' counsel:

Q. You spoke of having fumigated a cargo in Boston. How is that done?

A. By tearing the bales open and spreading the rags out and burning sulphur.

Q. Can you state the expense of that process of disinfection?

A. $15 per ton.

Q. Is that the kind of a screw which was in use in the iron box (handing a large screw to the witness)?

A. Yes, sir.

(By the 7th juror:)

Q. Would not that large screw go right straight through one of the small bales?

A. Yes, sir; that size would.

(By defendants' counsel:)

Q. Are there different sizes of those screws?

A. Yes, sir.

Q. Of the same diameter as that big screw, but varying lengths?

A. Yes, sir.

Q. In these machines were there screws of the same diameter of this large one, but as short as the smaller one?

A. Yes, sir; there were various sizes and lengths adopted for the different sizes of bales.

Q. There is a question that the juror asked about the larger screw, and that is, if that screw was used on a small bale, would one of those orifices be outside of the bale so that the steam could go into the box?

A. Yes, sir.

By plaintiffs' counsel:

Q. So that if that large screw was put into a small bale there would be an opening at each end?

A. Yes, sir

433 By defendants' counsel:

Q. Supposing one of the shorter screws of that same diameter was put into the bale, would there be any method by which the steam could go into the box except by going through the bale?

A. No, sir. I have been a large importer of paper stock, rags, etc. And that is the way my attention came to be drawn to this subject.

(By the seventh juror:)

Q. Was any money ever subscribed for this?

A. I spent a great deal of money.

By plaintiffs' counsel: Who subscribed the money?

A. Oliver L. Gardner.

Q. You got 4,000 shares and the other man 1,000 shares?

A. Oh, then, you mean—no money.

By defendants' counsel:

Q. Was stock sold and money put in the treasury?

A. There was a donation of stock to the treasury.

Q. Was the stock transferred for the patent in order to make it full-paid stock?

A. Yes, sir.

By plaintiffs' counsel:

Q. Who bought the treasury stock?

A. Oliver L. Gardner bought some.

Q. How did he pay for it?

A. I don't remember now.

By defendants' counsel:

Q. What is the diameter of the large screw, and what is the diameter of the smaller screw?

A. The larger one is five-eights the diameter of the interior. The small one is one-thirty-second.

434 EMERY W. MCCLINTOCK recalled by plaintiffs.

By Mr. Cockran:

I have heard the testimony of Mr. Parker. I never at any time asked Mr. Parker for any of that stock. I never had any conversation with him in which I threatened, if he didn't give me some of the stock, to upset his apple cart. I never used the name of ex-Secretary Boutwell as a means of threatening or terrifying him into giving any stock to me. There was a conversation between Parker and me concerning stock. He asked me to influence Mr. Boutwell to use his influence with Assistant Secretary French to have this process allowed. I told him that Boutwell, I thought, had a good deal of influence with French, and after that we met at Gov. Boutwell's office. And then the question of stock was about retaining Gov. Boutwell. I never asked him for any stock for myself. I never threatened him with any injury in case he didn't me a piece of the stock.

Q. How did you come to write this letter to him?

A. The importation of rags was entirely forbidden. We had some Leghorn rags that we wanted to get in, and at that time I supposed that this was an honest process, and I was willing for the purpose of getting the rags in to have them go through that process. When the process was explained in Washington, when the circular was talked about there, my knowledge of chemicals told me that sulphurous acid gas could be made at a very low price and that rags could be treated abroad with it, which I decided to do.

Q. Did it refer to any rags made up and baled and for which you had consular certificates?

A. Yes, sir; to those rags.

By defendants' counsel:

Q. Was not Mr. Boutwell in your pay?

A. Yes, sir.

435 Q. He lives in Washington?

A. Yes, sir.

Q. And has influence with the department?

A. Yes, sir.

Q. And you retained him to influence the department?

A. No, sir; as our attorney.

Q. Did you take him as your attorney to argue matters before the department?

A. Yes, sir.

Q. In connection with rags?

A. And other matters.

Q. You had him as a professional assistant to influence the action of the department in your business?

A. We had him as a lawyer.

Q. You wouldn't call him a lobbyist, would you?

A. No, sir.

Q. You testified a few minutes ago about an importation of rags from Leghorn. In the year 1885, in June, did you import rags on the ship Vicardo?

A. I don't recollect positively where she was from.

Q. From Naples?

A. We never had but one small lot of rags from Naples.

Q. Was it on that vessel?

A. I don't recollect.

Q. Do you know whether in the early part of 1885 cholera was raging in Italy to a very large extent? I mean prior to the 1st of June?

A. I never heard of any cholera in winter.

Q. (Repeated.)

A. I don't know.

Q. Had you not information that in the spring of 1885, at the time you imported rags by the steamer Vicardo, from the city of Naples, there had been in that city 1,994 cases of cholera and 1,031 deaths?

A. No, sir; and it is not so.

Q. Did you ever claim your rags that came on the steamer Vicardo?

A. If we had any, we claimed them.

Q. Did you state that it was not a fact that in June, 1885, when these rags came from Naples on the steamer Vicardo, there had not been 1,994 cases of cholera and 1,031 deaths in that city?

A. I don't say that we imported on the Vicardo. The
436 Naples rags that we had, there had not been any cholera of

any consequence in Naples for a year previous to their shipment. You have got the wrong year.

Q. Do you say that you did or not import rags on the Vicardo?

A. I don't know.

Q. Do you know when the Vicardo arrived here?

A. I don't know.

Q. Do you swear that you never claimed six bales of rags consigned to you on the Vicardo, of which bales three were cotton and three were linen rags?

A. No, I do not swear that we did not claim them, because we did.

Q. Do you swear that you did claim six bales of rags that came on the Vicardo?

A. I don't know that they came on the Vicardo. I swear that we claimed six bales of rags that were consigned to us by our request by a man in Naples.

Q. Was that in June, 1885?

A. I don't know.

Q. Can you tell me when those bales arrived?

A. I don't know.

Q. Can you tell within one month?

A. No, sir; nor within a year.

Q. Having previously sworn that within one year previous to the time when you had any consignment of rags which you claimed, will you now swear that within one year previous to June, 1885, there had not been 1,994 cases of cholera and 1,030 deaths in Naples?

A. That is my impression.

By the Court:

Q. Do you know anything about it?

A. Not positively.

Q. You were not in Naples during that time?

A. No, sir.

By defendants' counsel:

Q. Has your counsel ex-Gov. Boutwell been Secretary of the Treasury?

A. Yes, sir.

Q. When was that?

437 A. Under General Grant. I want to make a statement about those six bales of rags. They were delivered to us by E. B. Bartlett & Company without being disinfected, or any charge for disinfection being made on them.

Q. Who were the consignees of the Vicardo?

A. I don't know; agents of the line, probably.

Q. What line was it?

A. I don't know.

Eighth day.

Defendants' counsel: I renew the motions which I stated at the close of the plaintiffs' case, and I move now that the complaint may be dismissed as to defendant Woodruff. I move that the complaint be dismissed as to defendant Nitchie. I also move that there may be a direction of a verdict for all of the defendants. I move that a verdict be directed for each of the defendants specifically. I also move for a nonsuit as against each of the defendants upon the grounds already stated.

Mr. Prentice also moved for a nonsuit on the following grounds:

(1.) That for the official acts of the defendant William M. Smith in his letter dated June 6th, and his reply to the collector's letter of the same date, and in the permit of his "rags excepted" of June 10th, in respect to any of the Vigilant's cargo, he is not liable to the plaintiffs in damages.

(2.) That for the official acts of the health officer in the quarantine permit or certificate for the Battaglia, June 17th, with the addition of the words "rags excepted," to be disinfected at Baltic stores, or Robbin's reef, he is not liable for damages in this case.

(3.) That the health officer had the right and the duty to
438 decide whether the discharge without disinfection in June,
1885, of the imported old rags on the Vigilant and Battaglia was dangerous to the public health, and for the expression of his opinion in this regard after the conference of sanitary officers in New York, April 23d, to the Secretary of the Treasury and the collector of the port when requested by them so to do, as seen by the documents in evidence, he is not liable for damages in this suit.

(4.) That the health officer had the right in the exercise of his discretionary authority to accept rags from the quarantine permits to the Vigilant and the Battaglia, and to refuse a permit for the discharge of these rags unless they were thoroughly disinfected.

(5.) That in the absence of an offer at the request of the owners to disinfect them by one of the four improved methods, the health officer had the right to require that the rags should be subjected to such measures of purification, or disinfection, as he judged necessary, and for the disinfection by superheated steam at Robbin's reef, within quarantine jurisdiction, he is not liable for damages in this suit.

(6.) That the delivery and disinfection of the Vigilant's rags at the Baltic stores was not by the health officer, or by his orders, and for these acts he is not liable for damages in this suit.

(7.) That the evidence is sufficient and uncontradicted, that the measures of disinfection and purification of rags on the Vigilante and Battaglia judged by the health officer to be necessary were jusified by his information and the best sanitary opinion of health officers of the preventive measures necessary for the protection of the public in June, 1885.

439 (8.) That no combination, no conspiracy, no improper claims upon his official action, and no fraud has been proven against the health officer, and without such evidence no inferences

can be drawn to make him liable in damages in this suit, and the action against him should be dismissed.

The Court: During the time this case has been on trial I have considered very carefully the questions that arise, and it seems to me that the acts of the Government officials in ordering these goods to the warehouse to be disinfected were entirely outside of any authority conferred upon either the collector of the port, or the health officer, or any one else; that the taking of those goods against the protest of the plaintiffs to those stores, and subsequently holding them and refusing to deliver them without the payment of their charges was an act not authorized by law, and was entirely unjustified by any power conferred on either of those officers, and was a direct injury to the plaintiffs' property. For that an action must lie against some one; and it seems to me on the evidence in this case that the firm of E. B. Bartlett & Company, owning these stores, and having possession of the property and refusing to deliver it to the owners without payment of this sum, became thereby liable for the damage that was sustained in consequence of that refusal. Whether or not Dr. Smith is also liable depends upon whether or not it is shown that he conspired with the Bartletts to get the goods into their possession for this purpose; and, while the evidence on that subject is to be drawn entirely from his acts, and while it is not very clear or satisfactory, I still think it is a question for the jury. Acts of conspiracy cannot be proven by direct declaration, and they must in a very great number of cases be inferred from the acts. I think, therefore, I shall submit that question to the jury to say
whether or not they can find as a proven fact in this case
440 that Dr. Smith, not in the discharge of his duty as a health
officer, but for an unlawful purpose, did agree or conspire with Bartlett to put the goods into his possession. I will leave it to the jury to say whether they can infer that as a fact from his acts. I can see no other view of this case upon which, under all the circumstances and under the authorities, this case can be dismissed. I deny the motion.

Defendants' counsel: I except to your honor's refusal to grant each of the motions which I have stated.

I have inadvertently omitted to put in the letters patent of this process. We did present one patent, but it seems that there was a prior patent, and I would like to have that go in evidence.

The Court: The letters patent may be considered in evidence.

Defendants' counsel: I move for a direction of the verdict in favor of Dr. Smith formally.

Motion denied. Defendants' counsel excepts.

The court charged the jury as follows:

GENTLEMEN OF THE JURY: Before I state to you the rules of law that are to control this case it is proper to state generally the duty that a jury has to perform in the trial of an action of this kind, as distinguished from the duty that devolves upon the court.

The action is one that the law calls tort. It is founded upon a wrong. The basis of the action is the damage that is done to the

property of the plaintiffs, and it is to recover for the damages thus caused that this action is brought. In actions of this kind it is the duty of the court to instruct the jury as to the law; that is, in regard to the rules of law that are to govern them in the decision of the questions submitted to them; and the jury are bound to take from the court the law as it is laid down and to apply the rules of law as stated by the court to the decision of the questions
441 which they are to determine. If an error is made, if the wrong rule is applied the parties have a remedy; but the rule of law as laid down by the court controls the case, and justice can only be done when the jury carefully and faithfully take- the rules of law as the court lays them down and conscientiously applies them to the facts of the case as they find them.

On the other hand, so far as the facts are concerned, and so far as the inferences to be drawn from the facts are concerned, that is a matter to be left entirely with the jury, and, subject to the power of the court to set aside a verdict where it is against the evidence or against the facts, the verdict of the jury in regard to the facts is conclusive. There is no method of review. I simply state this in opening to show you that you are the persons here who are to pass upon the facts and upon the inferences to be drawn from the facts as you find them to exist; and that applying the rules of law as they shall be stated to you, you are to determine which of the parties is liable.

Here it is proper for me to say, that during the trial of the case some remarks have been made by counsel to the effect that the parties, or some of the parties to this action belonged to some one political party, and that some of the newspapers have taken an interest in this case. But I feel that it would be an insult to you if I should state that in the determination of this question you are not to be influenced or controlled in any way by any considerations of that kind. You are here to do your duty as American citizens entrusted with the performance of an important public function as part of the judicial administration of the State. Here these questions are to be determined entirely upon the evidence as given before you. You are to decide according to the testimony you have heard and not upon the statement of facts made by the counsel or by the court. Where the evidence is contradictory you are
442 bound to ascertain which of the witnesses you believe, and having determined what are the facts, and what are the proper inferences to be drawn from the facts, you are to render your verdict regardless of every other consideration.

Now, I shall not attempt to state to you the facts in this case. They have been repeated to you by counsel for both sides at considerable length. You have heard counsel draw the inference which they wished to draw from them, and I leave the facts to your recollection as you yourself recall them, and as they have been called to your attention by counsel for the parties.

As I have stated, this is an action founded on tort. It is for injuries inflicted upon the plaintiffs' property by the acts of the defendants. But this tort, this wrong, does not imply in all cases an intentional wrong. An action for tort is not necessarily where a man intentionally or for malicious purposes attempts to injure property, but where personal property which belongs to one person is in the possession of another, and he refuses to deliver possession of it to the owner, or where a person takes possession of personal property not his own, and retains it against the demand of the owner. Such a person then commits a wrong, and the law makes him liable for the damages of that unlawful act; and that is so whether or not he honestly believes he had a right to the possession of the property, if it subsequently appears that he had not. His act is, legally speaking, a wrong, and it is for such a wrong that the plaintiffs here ask recovery from the defendants.

Now these rags belonged to the plaintiffs. They were purchased by the plaintiffs, and they were the owners, and were entitled to possession of them. The plaintiffs here claim that the defendants, Messrs. Bartlett & Co., obtained possession of these rags and refused to deliver them, Bartlett & Co. claiming a lien upon them for
certain services which they had rendered. The first ele-
443 ment of the cause of action is made out, namely, the fact that
the plaintiffs owned the rags, and Bartlett & Co. had possession of them, and refused to deliver them up without the payment of certain sums of money; and from that refusal to deliver the plaintiffs have sustained damages. The damage to the property of the plaintiffs is therefore made out.

I charge you as a matter of law that Bartlett & Co. had no lien upon these goods. They had no right to retain possession of them; no right to keep them away from the plaintiffs, who were the real owners of the rags. The powers vested in the health officer of the port of New York are very large. From the necessities of the case they must be so. Among other powers, it is provided that merchandise shall be submitted to such measures of purification as the health officer shall judge necessary. But that does not mean that the health officer can take the goods from the possession of the owner and deliver them over to any third person that wants to purify them, and that that third person can then retain them and charge what he pleases for their purification, and deliver them only to the owner when such charges are paid. That duty is thrown upon the health officer, as a public officer, to perform. The statute provides that the expenses he is put to—that is, the necessary expenses which he incurs—shall be a lien upon the goods; but his action is to be performed under the sanction of his official duty as a public officer, and as such he would be protected in the exercise of that power. But in this case nothing of that kind is attempted, nor does it appear that the health officer himself directly orders that those goods shall be delivered to Bartlett & Co., or that this disinfecting company shall be employed to disinfect the goods. The goods are taken from the ship. They are delivered to Bartlett's stores. They are there
purified, or the process of purification is attempted, and then
444 Mr. Bartlett says that he will not deliver them to the owner
until the expenses incurred in that operation are paid. But
Mr. Bartlett had no authority to hold those goods as against the demand of the owner until that sum was paid. Therefore Mr. Bart-

lett is liable for the wrong he has caused, and the plaintiffs are entitled, as a matter of law, to a judgment against him for the amount of the damage sustained by the plaintiffs in consequence of that improper and unjust detention. I therefore direct you to find a verdict for the plaintiffs against E. B. Bartlett & Co. for the damages the plaintiffs have sustained in consequence of the detention of these goods.

The liability of the health officer, however, depends upon a different rule. In order to make him liable for the damage that was sustained, it was necessary to allege and prove the charges in the complaint as to a conspiracy—the charges of which you have heard so much. Therefore, whether or not there was a conspiracy between these parties is a question that you must determine affirmatively before you can find a judgment against Dr. Smith, the health officer.

Dr. Smith is a public officer. He occupies the position of health officer of this port, a position in which more power is vested than in any other public official that I know of in the State of New York. As such health officer he has authority to stop goods at quarantine to see that they are safe from infection before they are sent to the city to be distributed. Upon the faithful discharge of the duties of his position depends the health of millions of human beings, as well as the prosperity of this great city and State of New York. And in the exercise of his duties, where they are exercised in good faith, where questions are submitted to him within the jurisdiction committed to him, he is entitled to the protection of courts and juries and of every
law-abiding citizen, and for mistakes in the exercise of any
445 discretion or any power vested in him, no matter what the
motive may be, so long as it is of a judicial character, he is
not responsible. So far as any duty of his is concerned in any duty thrown upon him by the law and in the exercise of that power which is given to him by virtue of his office, no matter what happens, he is not responsible. But it is for you to determine whether or not the acts that he performed were a part of the duties of his position and whether he exercised his power in good faith. The health officer of the port has, as I have stated, certain defined duties and powers. His duty is not to direct the collector of the port. If, however, the collector of the port should call upon him for his opinion, and he should give that opinion in good faith merely to advise the collector, while it would not be an act under his authority within the scope of his powers, it would still, as long as he acted in good faith and with the honest intention simply to protect the city, leave him without liability. But in order to sustain a verdict against him the plaintiffs must satisfy you by a fair preponderance of evidence that there was concerted action or a combination between Dr. Smith and Mr. Bartlett to defraud the plaintiffs or cause other injury to the plaintiffs' property, which actually resulted in this damage, and that the plaintiffs must prove to you.

A conspiracy, or fraud of any kind, must be proven. Neither judges nor juries can act in cases of this kind without proof. But by proof, it is not implied that you should have direct evidence that

the parties met together and agreed to do so and so, because that, in the very nature of things, is often impossible. Parties who make these combinations, these corrupt agreements, do not meet together and make the agreements in the presence of witnesses so that they can be proved. They are almost always secret combinations, and they can usually be proved only by the subsequent acts of
446 the parties. And that is the proof which the plaintiffs claim
here. They claim that proper inferences to be drawn from the acts of Dr. Smith, from what he did and said, should satisfy you that there was such an agreement or combination between himself and Mr. Bartlett and others to get possession of these goods where there was no law that authorized it—as there is none—and to compel these plaintiffs to pay this amount to Bartlett & Co., before they could get possession. Now, if the facts proved here have satisfied you that that is so, and that there was such an agreement, it is not necessary that the parties should meet together and say: "I will agree to do this, and you agree to do that." But, if there was an agreement between them, however indefinite, if they acted in accordance with a concerted scheme to get possession of these plaintiffs' property, and hold it, and compel them to pay Bartlett & Co. this money before they could get it back again—if you find that that is the fact, and that this was done, not with the object of protecting the public health, but for the purpose of getting it into Bartlett & Co.'s hands, it is your duty to find a verdict against both Bartlett & Co. and Dr. Smith. And that is the question, the serious question, which you have to determine here.

Now, a public officer, when he is engaged in the performance of his duty, is presumed to act from good motives. He is presumed to be innocent, as every man is presumed to be innocent, until he is proved guilty.

Accordingly, there must be proof. You must be satisfied by the facts as you find them, and from the inferences which you draw from those facts, drawing them as reasonable men, that his acts are not consistent with a fair and honest intent to perform his duty before you can find against him. If you are satisfied of that, and if the facts proved here by a fair inference have established that to your satisfaction, then, as I said, it is your duty, and you are
447 bound by your oaths, to find a verdict for the plaintiffs, and
against both Mr. Bartlett and Dr. Smith.

I have not attempted to state to you the facts in the case or the grounds upon which counsel for the plaintiffs claim that you infer this conspiracy. He has stated them to you quite fully, and you have heard counsel for the defendants in his explanation of any inconsistencies, real or apparent in the acts of Dr. Smith. You are to say whether you find as a fact that such a conspiracy existed. If you find that Dr. Smith conspired with Mr. Bartlett then you will find against both the defendants for the damages that the plaintiffs sustained in consequence of this unlawful act.

The plaintiffs were compelled to pay to Bartlett & Co. $4,904 90 for the rags by the Vigilante, and $409.29 for the other rags. For these two amounts they are entitled to a verdict. They are also

entitled to recover for any damage that the plaintiffs have satisfied you they sustained in consequence of the detention of the rags during the period named. They claim that the value of these rags depreciated from the time that they were taken to the time that they got possession of them from thirty to twenty-three thousand dollars, I think, making a deterioration or depreciation in some way which if not very well explained of seven thousand dollars. You are to say, taking into consideration all the facts of the case and the evidence you have heard, what will compensate the plaintiffs for this injury—what will put them in the position in which they would be now if these rags had not been taken. That amount the plaintiffs are entitled to recover. Whatever damage you affirmatively find they sustained, for that damage they are entitled to a verdict. But that must be proved, as well as anything else, and it is for you to say, taking into consideration all the facts of the case, how much will compensate the plaintiffs for the injury they
448 have sustained in consequence of the improper taking and detention of their property.

I will add, also, that in your discretion you may allow interest on the amount which you find the plaintiffs are entitled to, from the date at which they received possession of the rags and paid the money, which appears to be on the 9th of October, 1885.

Defendants' counsel: I except to your honor's charge that this is an action founded upon tort, in so far as it does not confine tort to an action for conspiracy.

I except to all statements in your honor's charge that the plaintiffs can in any event recover of Bartlett without proving conspiracy as alleged in the complaint.

I except to that part of your honor's charge which speaks of this: That this wrong or tort does not mean intentional wrong. I claim and ask your honor to charge that under the form of action alleged in the complaint plaintiffs must prove a corrupt and unlawful conspiracy before they can recover from the defendant-, or any one of them, or as against the firm of E. B. Bartlett & Co.

I except to that part of your honor's charge which says that the plaintiffs were entitled to the possession of the goods; that Bartlett & Company claim a lien; that the damage to property is made out; to that part of the charge where your honor said that Bartlett & Company had no lien or right to possession or to keep the goods from plaintiffs. I ask your honor to charge that they had a lien; that the plaintiffs had a right to keep the goods until their lien was paid; and I ask your honor to charge that they had a specific lien separately, (1), for storage; (2), for lighterage; (3), and for disinfection, for the amounts paid for these respective services.

449 I except to that part of your honor's charge which says that the health officer cannot take goods from their owner and give them to third persons to purify them, and that such persons cannot retain them until their lien is paid.

I except to that part of your charge which says that the work must be done by the health officer himself, or under the sanction of his official duty, or under his personal supervision, and to each one of those propositions.

I except to that part of the charge which says that nothing of that kind was attempted.

I except to the statement in the charge that the goods were delivered to E. B. Bartlett & Co.'s store, and that E. B. Bartlett said they would not deliver the goods until the expenses were paid. I ask your honor specially to charge that in that detention neither Mr. Woodruff nor Mr. Nitchie had part.

I except to that part of the charge which says that E. B. Bartlett or E. B. Bartlett & Co., had no right to retain the goods until their claims upon them were paid.

I except to that part of the charge which says that the plaintiffs are entitled to a verdict against E. B. Bartlett or E. B. Bartlett & Company, or either E. B. Bartlett, Mr. Woodruff or Mr. Nitchie, and to your honor's direction of a verdict against either of them for any amount whatever. And, on the contrary, I now move that your honor direct a verdict in favor of the defendants, Bartlett, Woodruff and Nitchie; and that your honor direct a verdict in favor of E. B. Bartlett; that your honor direct a verdict in favor of Mr Woodruff, and that your honor direct a verdict in favor of Mr. Nitchie.

I except to the charge that there is no law to authorize the holding of these goods.

I except to that portion of the charge which says that the plaintiffs are entitled under any circumstances to recover the damages sustained by the unlawful acts of the defendants or either of them.

And I ask your honor to charge that no unlawful act
450 is shown on the part of either Dr. Smith or of E. B. Bartlett
& Company, or of Mr. Woodruff, or of Mr. Nitchie; and I ask that special instructions may be given to the jury on behalf of each one of the four defendants.

I except to that part of the charge which does not limit the amount of damages which may be recovered under any circumstances against any of the defendants, to the amount paid by Lockwood & McClintock to E. B. Bartlett & Company, at the time they recovered possession of their goods.

The Court: It may be proper that I should say to the jury in relation to that, as I think I have already said, that they can only give the plaintiffs damages for the detention of the goods during this period; if they find from the evidence affirmatively that the plaintiffs did sustain damage in consequence of the detention of the goods.

The 7th juror: Your honor said in your charge that the evidence in regard to the price of the goods to arrive was ruled out?

The Court: No; what was ruled out was any agreement or proof of the contract that Mr. McClintock had made to sell the goods. He said they had suffered a depreciation from some cause.

Defendants' counsel: I ask your honor to charge that the proof stands uncontradicted that the price of the goods at the time of their arrival was two cents a pound, and that the price of the goods at the time of their delivery to Lockwood & McClintock was above two cents a pounds, and therefore in the nature of things there can be no recovery and no damages for any decline in the price of the goods; that thereby it follows that there was no damage resulting from the detention of goods except, perhaps, of interest.

The Court: I will say to the jury that there was a witness who testified for the defendant substantially to that effect, and it 451 was not contradicted, except so far as it was contradicted by Mr. McClintock's statement.

Defendants' counsel: I except to your honor's amendment of my request, and to each of the statements in your honor's additional statement of the law to the jury.

I also ask your honor distinctly to charge that no damage can be recovered by reason of the fall in the price of goods, as no fall has been shown.

I ask your honor to charge that the plaintiffs can recover nothing by reason of a contract to arrive, and the subsequent non-delivery of that contract and reduced price.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that the plaintiffs cannot recover what will compensate them for special injury; that that must be limited, as I have before requested.

The Court: They cannot recover for anything except the injury that the plaintiffs have shown.

Defendants' counsel: I except. I also request your honor to charge that the plaintiffs cannot recover anything beyond the amount paid by Lockwood & McClintock to E. B. Bartlett & Co., and the interest on the value of the goods, as they may find such value.

I also except to that part of your charge that in any way intimates that the holding of these goods by Bartlett & Co. was unlawful.

I also except to that part of the charge which states that the taking by the collector was unlawful. And I ask your honor to charge that the United States authorities or some of them, were in the physical control and possession of these goods.

I ask your honor to charge that these goods could not have 452 been taken from the custody of E. B. Bartlett & Co. without the sanction of the United States collector and the United States Treasury Department. And I add to that another request of substantially the same character that that is evidenced by the fact that the goods were in the bonded warehouse of the defendants E. B. Bartlett & Co. under the provisions of the statute.

I also request your honor specifically to charge that plaintiffs cannot maintain this action against either of the defendants without proving the conspiracy between all of the defendants; that the plaintiffs cannot maintain this action against Smith and Bartlett, or any two of the defendants, without proving the conspiracy on the ground that they have alleged it in their complaint; that Woodruff and Nitchie cannot be held in this action without some proof that they knew of a conspiracy between Smith and Bartlett. That the action for conspiracy is in the nature of a criminal action, and that conspiracy must be proved beyond a reasonable doubt in order to maintain this action.

The Court: It must be proved by a fair preponderance of evidence.

Defendants' counsel: I except to your honor's amendment to my proposition of law.

I ask your honor to change your proposition, and charge with a modification, as I have stated. To your honor's refusal to so charge I except.

I ask your honor to charge that conspiracy like fraud cannot be presumed—it must be clearly proved.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that the amount paid by E. B. Bartlett & Co. for lighterage cannot be taken into account in the estimate of damages; that the amount charged by E. B. Bartlett & Company for storage cannot be taken into account in the estimate of damages; that the jury must find that there was no damage to the goods by the process of disinfection. 453

The Court: There is no evidence that there was any damage by that.

Defendants' counsel: I ask your honor to charge that no action will lie against Dr. Smith, provided he was acting within the limits of his jurisdiction, even though he acted erroneously, unless it is shown that he acted from impure or corrupt motives.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that the defendants Bartlett, Woodruff and Nitchie cannot be held liable if the goods were sent to a bonded warehouse by the order of Collector Robertson or the Treasury Department.

I ask your honor to charge that specific direction as regards Woodruff and Nitchie respectively.

I ask your honor to charge that conspiracy is a misdemeanor under the laws of this State, punishable with imprisonment.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that the presumption is that a public officer has performed his duty properly and without wrong or corrupt motives.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that this law applies to Dr. Smith as health officer, and to Judge Robertson as collector of customs.

The Court: I so charge.

Defendants' counsel: I ask your honor to charge that the jury cannot give any damages resulting from previous sales to arrive.

The Court: I so charge.

454 Defendants' counsel: To your honor's refusal to charge each and all of these as requested I except.

The Court: I refuse to charge all of the requests, except those that I indicated that I did charge and except as already covered by the charge.

Defendants' counsel: I except. And I move for a direction of the verdict in favor of all of the defendants, and in favor of each of the defendants separately.

Motions denied. Defendants' counsel excepts.

Defendants' counsel: I renew that motion, on the ground that no conspiracy is shown, and that such proof is necessary to establish the cause of action set out in the complaint.

Motion denied. Defendants' counsel excepts.

I also except to that portion of your honor's charge wherein your honor states that it is for the jury to determine whether the acts of Dr. Smith were a part of his duty, and whether he performed those acts and of his duty and in good faith.

The Court: I will modify that by saying that the question is whether he performed the acts that he did perform in the line of his duty, and in good faith.

Counsel for Smith: To the qualification of the request I except.

The Court: I don't wish the jury to say what acts are in the sphere of his duty. I simply say that all the acts of his, within the authority conferred upon him, performed in good faith, he is protected and should not be charged with.

Counsel for Smith: I except to that portion of your honor's charge in which you state that the inference may be drawn from
455 what was said and done by Dr. Smith after the acts complained of. In order to ascertain whether there was a combination or conspiracy between Smith and Bartlett to get hold of plaintiffs' goods and hold them; and also I except to that succeeding portion of your honor's charge in which it is stated that if the evidence of his acts and declarations have satisfied the jury that there was an arrangement between Bartlett and Smith to get hold of plaintiffs' property and hold it, or to get the goods into the hands of Bartlett & Co., then the jury may find a verdict against Dr. Smith and the defendant. And I ask your honor to charge that the jury cannot draw any inference from subsequent acts and declarations of either of the defendants; and further, that such combination and conspiracy cannot be ascertained by the jury through inferences from the acts and declarations of the defendant.

I also except to that portion of your honor's charge in which you stated that if the facts proved here show by a fair inference that Dr. Smith did not act with a good motive, the jury might find a verdict both against Smith and Bartlett.

I also except to that portion of your honor's charge in which you stated that the health officer had no authority to send the rags in question to any third party, and that such third party would have no right to keep the rags away from the plaintiff or to require pay for services rendered. And I ask your honor to charge the jury that there is no evidence in this case that the health officer did send the goods, or did procure the sending of them to E. B. Bartlett & Co.

The Court: I charge the jury that there is no evidence that Dr.

Smith sent the goods to E. B. Bartlett & Company. I decline to charge the rest of your request.

Counsel for Smith: I except. And I ask your honor to charge that there is no evidence that Dr. Smith did anything which induced the sending of the Vigilante rags to the Baltic stores.

456 The Court: That I decline, except as already covered by my charge.

Counsel for Smith: I except to the refusal of your honor to charge the first request.

The Court: I haven't refused to charge it yet. Read it.

Counsel for Smith: That if a conspiracy between the defendants be established, yet the statements of one of the conspirators as to a past transaction, accompanying no act done in furtherance of the criminal enterprise alleged in the complaint herein must be disregarded, and that such declarations or statements are not competent against the other defendants.

The Court: As against the other defendants—I so charge.

Counsel for Smith: I ask your honor to charge that statements or declarations of either of the defendants, in April or May, 1885, or relating to other vessels than the Vigilante and Battaglia, are not competent evidence against either the defendant Bartlett or the defendant Smith.

The Court: I so charge.

Counsel for Smith: I ask your honor to charge that evidence connecting one of the defendants with the acts complained of in this case, or with the damages alleged, is not sufficient to make such defendant liable in the absence of evidence of an agreement or understanding that such defendant was to share in the proceeds or benefit of the detention or disinfecting of those rags.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that neither of the defendants can be held for the whole of the damages claimed, although some of the money paid by the plaintiff went to him, unless it be shown that such defendant was one of the principals for whom Bartlett & Company acted in receiving the payment of the bill for storage, lighterage, disinfecting, etc.

Declined. Defendants' counsel excepts.

457 Counsel for Smith: I ask your honor to charge that it is not sufficient to hold either of the defendants liable for the plaintiff to show an understanding or agreement among the defendants that one of them should receive some benefit from the detention and disinfection of the rags in question, unless it be further shown that the money paid the plaintiffs was received for and on account of the defendant sought to be charged therewith.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that for services rendered in lighterage and storage of rags sent to the defendants Bartlett & Company's warehouse by order of the collector of the port, they had a right to demand and receive the usual charges and pay.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that for work and labor in and upon the rags sent to Baltic stores in lighters for disinfection by order of the United States customs officers and the collector of the port, there was a lien on the rags which those who rendered the services ordered had a right to insist upon.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the defendants could not claim the rags ordered to the Baltic stores by the collector of the port until they tendered the proper pay, in whatever amount that may be found, for the necessary services under such order.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that if the plaintiffs did not demand their rags until after the order of the collector had taken effect directing that they be sent to Baltic stores 458 for disinfection, they and not the defendants, are responsible for that delay and for any work upon the rags in obedience to such order.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the health officer of the port had the right to order the rags on the Battaglia to Robbin's reef for disinfection.

The Court: That is so, for disinfection. I say, though, that he had no right to order them into the hands of any third party.

Counsel for Smith: I except to the qualification of that request and ask your honor to charge that there is no evidence that Dr. Smith did order them to Robbin's reef into the hands of any third party.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the health officer had the right to prescribe the right of disinfection of the rags on both of these vessels, and to require the rags to be sent to the place within the port of New York where this method could be used.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that for method No. 4, in the circular of December 22, 1884, for purification by superheated steam, there were but two places in the port of New York; first, at the Baltic stores and afterwards at Robbin's reef.

The Court: I so charge.

Counsel for Smith: I ask your honor to charge that the disinfection of all the rags mentioned in the complaint was under the orders of the United States officers.

Declined. Defendant's counsel excepts.

459 Counsel for Smith: I ask your honor to charge that until after the Treasury circular of June 10, 1885, took effect, the actual control of the rags was in the collector of the port and not in the defendants.

Declined. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the action of defendant Smith in communicating his views to the collector of the port in his letter of June 6, 1885, was at the request of the collector of the port, and was within the discretionary powers of the health officer.

The Court: I so charge.

Counsel for Smith: I ask your honor to charge that the defendant Smith cannot be held liable for damages in this suit for his letter of June 6th to Collector Robertson.

The Court: I so charge. The mere sending of that letter itself would not be sufficient.

Counsel for Smith: I ask your honor to charge that the defendant Smith cannot be held liable for damages in this suit for his advice to the Secretary of the Treasury or to the collector of the port, that imported old rags should be held subject to the rule published in the circular of December 22d, 1884, or those adopted at the conferences of health officers.

The Court: The mere fact of giving such advice would not be sufficient.

Counsel for Smith: I except to the qualification of that request, and I move that it be charged in the language stated by me.

Denied. Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the defendant Smith cannot be held liable for damages in this suit for his suspicion of the rags on the Vigilant or the Battagliae, or for a decision that they should be disinfected.

The Court: I so charge—that mere fact alone.

460 Counsel for Smith: I except to the qualification.

The Court: I charge your request.

Counsel for Smith: Your honor limits it to the mere act of his decision.

The Court: No; I charge your request.

Counsel for Smith: I further ask your honor to charge that this action cannot be maintained unless damages are proven as the result of the combination and conspiracy of defendant Smith and defendant Bartlett.

The Court: As against defendant Smith, I so charge. As against defendant Bartlett, I decline to so charge.

Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that if the acts of the defendant Smith were lawful there can be no recovery in this action.

The Court: I decline to so charge.

Defendants' counsel excepts.

Counsel for Smith: I ask your honor to charge that the fact that there was a conspiracy would not affect the legality of the act of defendant Smith.

The Court: I so charge.

Counsel for Smith: I ask your honor to charge that the mere complicity in a conspiracy does not, as matter of law, render every guilty party liable, in a civil suit, for moneys had and received, to every person who has been defrauded by means of such conspiracy

The Court: The fact that the money was had and received is not in this action. I decline to so charge.

Defendants' counsel excepts.

461 Counsel for Smith: I ask your honor to charge that no recovery can be had in this action based upon inferences that the defendant had not acted in good faith.

The Court: That is declined, except as already charged.

Defendants' counsel excepts.

The Court: I ask your honor to charge that a public officer is not responsible in a civil suit for a judicial determination in a matter over which he had jurisdiction, however erroneous it may be, or however malicious his motives.

The Court: I so charge, within his authority.

Counsel for Smith: I ask your honor to charge that the determination by Health Officer Smith that all imported old rags should be disinfected was a judicial determination and was upon a matter within his jurisdiction.

The Court: I so charge that fact.

Counsel for Smith: I ask your honor to charge that such a determination cannot be controlled by his declarations at any other time or in any other matter, but only at the particular time and in the particular matter upon which it is made.

The Court: I so charge.

Counsel for Smith: I ask your honor to charge that the jury must take into consideration the conclusions of the conferences of the health officers, in which Health Officer Smith took part, which are in evidence, and cannot infer bad faith in such conclusion.

The Court: The jury can take into consideration, of course, that fact as all the other facts in the case.

Counsel for Smith: I except to that qualification, and I further ask your honor to charge that in respect to any liability of Health Officer Smith for the damages alleged in the complaint, the jury must dismiss from consideration any question of fraud upon 462 the evidence respecting the work performed by the Paper Stock Disinfecting Company in the disinfection of the Vigilante's rags.

The Court: I so charge as against defendant Smith.

Counsel for Bartlett: I request your honor to charge each of the requests which you have refused on the part of Dr. Smith, and I except to your declination to so charge.

I omitted to ask your honor to charge that the plaintiffs cannot maintain this action against any defendant without proving a conspiracy between two or more.

I except to your honor's charge, inasmuch as it appears to and does change the cause of action from conspiracy, as alleged in the complaint, to one of simple tort.

I request your honor to charge that the evidence is uncontradicted—that the Paper Stock Disinfecting Company, or the New York Disinfecting Company, was the sole instrument of disinfection.

Declined. Defendants' counsel excepts.

Counsel for Bartlett: I also ask your honor now to submit to the jury the question whether there was a conspiracy between Dr. Smith and either of the defendants, and as to each of the defendants, and to recall your instruction to find a verdict in favor of the plaintiffs against E. B. Bartlett & Company.

Declined. Defendants' counsel excepts.

Counsel for plaintiffs: I ask your honor to charge that the goods could not have been detained, even by the health officer, except for the purpose of disinfection, and that the jury can consider the alleged disinfection as a strong element of proof of his complicity in the wrong done to the plaintiffs.

The Court: I so charge.

Defendants' counsel excepts.

463 Counsel for plaintiffs: I ask your honor to charge that if, as Dr. Smith states, he knew the effect of his letter to the collector would be to send these goods into the possession of Bartlett & Company, that from that the jury can infer his complicity in this transaction.

The Court: Declined. I left it with the jury on all the facts in the case.

Plaintiffs' counsel and defendants' counsel both except.

Counsel for plaintiffs: There was something said here about there being two places of disinfection. What is meant by it I don't know, but your honor charged it. I suppose your honor did not intend to charge anything more than the fact that the disinfection was done at Baltic stores and then at Robbin's reef.

The Court: That is what I meant.

Counsel for Bartlett: I ask your honor once more to specifically change your charge of the direction of a verdict for the plaintiffs, against E. B. Bartlett & Company in any amount whatever.

Motion denied. Defendants' counsel excepts.

Counsel for plaintiffs: I would like your honor to charge the jury in regard to punitive damages.

The Court: I charge you, gentlemen of the jury, that if you find that this was the result of a fraudulent scheme on the part of Bartlett and Smith, that as against Bartlett and Smith you can find what the law calls punitive damages.

Defendants' counsel excepts.

The Court: Punitive damages, gentlemen, are in the nature of punishment. If you find that it was a fraudulent and malicious combination and conspiracy between Bartlett and Smith, then you are not limited to the actual compensation.

Defendants' counsel excepts.

464 Counsel for defendant Bartlett: I ask your honor to charge that the plaintiffs cannot recover punitive damages against Woodruff or Nitchie?

The Court: I so charge.

Counsel for defendant Bartlett: I ask your honor now, inasmuch as you have made that charge, to limit the amount that the plaintiffs can recover from E. B. Bartlett, or Bartlett, Woodruff and Nitchie, to the amount stated in your direction to find a verdict.

Declined. Defendants' counsel excepts.

Counsel for defendant Smith: In addition to the exceptions already stated I beg to enter my objections to the submission to the jury of any question of omission or neglect of duty on the part of Health Officer Smith, and I except to the same. And I ask your honor to charge that for any omission or neglect of duty on his part there cannot be a recovery in this action.

The Court: I so charge—that mere neglect of duty in any act within his authority.

Counsel for plaintiffs: Your honor does not mean to qualify the charge already made that Smith could only take these goods for disinfection.

The Court: I so charge.

At 9.40 p. m. the jury returned into court.

The Court: Gentlemen, what question is it that you wish to ask me?

The foreman: It is in reference to the damages in regard to the goods shipped, in regard to the price at the time of the arrival of those goods, and in regard to the time that Bartlett & Company delivered those goods to the plaintiffs.

465 The Court: As I stated to you before, the evidence of Mr. McClintock is, that during the period that those goods remained in the possession of Bartlett & Company they depreciated in value from $30,000 to $23,000. There is evidence given by one of defendants' witnesses to the effect that the price did not materially vary during that period. That question is one that you must determine, as to which of those statements you believe; and having determined that, you may then consider the amount that you will give to the plaintiffs to indemnify them for the loss they sustained in consequence of the goods being detained by Bartlett & Company during that period.

The foreman: Are we to take into consideration the price of goods sold on arrival?

The Court: There is no special allegation in the complaint of damage of that kind, and consequently you cannot allow any damage for any specific contract having been made; but you are to say what will compensate the plaintiffs for the detention of the goods during that period. If you find that there was no deterioration in the price during that time, then you could say whether or not you would allow the plaintiffs interest on the money during that period.

The 7th juror: Is the testimony of Mr. McClintock, that the value had depreciated from $30,000 to $23,000 in evidence, as far as it goes?

The Court: It is, if you believe it.

The 9th juror: Is there any question of damages that belongs to us except that of punitive damages, which would include both?

The Court: That is all; the amount of the money paid to Bartlett & Company by the plaintiffs. And if you find that there was conspiracy here, then you may find such damages against Mr. Bartlett and Dr. Smith as in your discretion you will allow them in the nature of punitive damages.

466 Mr. Goodrich: I except to each and every sentence which your honor has now charged to the jury.

The jury again retired, and at 10 p. m., not having returned into court, an adjournment was taken until tomorrow morning, April 29, 1887, at 10.30 a. m.

Ninth day.

The jury came into court the next day at 10.30 a. m.

The Court: Gentlemen, have you agreed?

The foreman: We have agreed upon a verdict in regard to Mr. Bartlett. (Handing a sealed envelope to the court.)

Counsel for Bartlett: Do I understand the foreman to say that they have agreed upon a verdict as to Mr. Bartlett?

The Court: Have you agreed upon a verdict against Dr. Smith?

The tenth juror: No, sir; we could not agree.

Counsel for Bartlett: I object to the rendition of any verdict against E. B. Bartlett & Company, or either member of that firm, unless the jury have agreed upon a verdict as to Dr. Smith.

Counsel for Smith: I join that objection.

The Court: Mr. Cockran, unless the plaintiffs consent I shall order a disagreement. If you consent to take a verdict against Mr. Bartlett and a dismissal against Dr. Smith, I will make such a disposition of the case.

Counsel for plaintiffs: I would like to know exactly how this thing stands.

Mr. Goodrich objects to the rendition of this verdict on the ground that it was not a verdict.

The Court: I say if the plaintiffs consent I shall take the verdict against Bartlett & Company and direct a dismissal against Dr. Smith. If, however, the plaintiffs do not consent I will order 467 a new trial. The sealed verdict that the jury have handed to me is in favor of the plaintiffs and against E. B. Bartlett & Company, and is for $8,000; no verdict as against Dr. Smith.

Counsel for plaintiffs: Wouldn't your honor direct a verdict as against E. B. Bartlett & Company and a disagreement as against Dr. Smith?

The Court: No, I cannot do that.

The Court: I have come to the conclusion that I will take this verdict as it is rendered—a verdict against E. B. Bartlett & Company for $8,000—and with no verdict as against Dr. Smith. The view that I have taken of the case appears to me that where the action is one based upon an injury to property the law allows an action or a judgment against any one of the *tort feasors.*

The foreman: I think we could agree now, with a little discussion.

The 10th juror: No, sir; we could not; we tried it all last night.

The 3rd juror: It was 9 o'clock before we arrived at this point at all.

The 2nd juror: I am willing for my part to go back and try a while longer.

The 7th juror: I really don't think there is a scintilla of a chance of our agreeing, even if we were shut up upstairs until doomsday.

The 6th juror: I would say the same thing. I don't think we can ever agree.

The 9th juror: I don't see that there is a possibility of an agreement.

Counsel for plaintiffs: We are in a quandary about this thing. If we refuse to take this verdict it is a question whether Mr. Bartlett will not hereafter set up the plea that there has been a verdict.

The Court: I will allow the jury to retire and talk it over for a while longer and see if they can come to some agreement.

468 Counsel for defendants: I object to your honor's allowing the jury to retire again after you have received their verdict.

The Court: No verdict has been received. They have announced that they have agreed as to one of the defendants and not as against the other. Until there is a complete verdict in the case, why, of course, there is no verdict until the issue has been disposed of. You can take your objection and exception, however.

Defendants' counsel excepts.

The 7th juror: Your honor, the foreman has just said to me that he knows just as well as any one of us that there is no chance of our agreeing but that he simply suggested our going out again, so as to please your honor.

The Court: Well, gentlemen, this has been a very long trial and a very troublesome one to the court, and for you, gentlemen of the jury, and I think if it is possible for you to reconcile the differences between you that it is better you should attempt to do so and agree upon a verdict. If there is any chance of a verdict, I should deem it my duty to keep you together for a while longer. Therefore, I think you may retire, and if you finally make up your minds that you cannot agree, then send me word, and I will discharge you.

The 9th juror: I understood yesterday that we could bring in a verdict against Bartlett & Co. separately from Dr. Smith, as we have done today.

The Court: But there is another issue that is not yet disposed of. That is the issue of the plaintiffs against Dr. Smith. Until that is settled, the whole case has not been tried and disposed of.

The jury again retired.

At 12.40 p. m. the jury returned in court.

The Court: I understand, gentlemen, that you have reconsidered the case, and that you are unanimously of the opinion that it will be impossible for you to agree as to Dr. Smith.

469 The foreman: Yes, sir.

The Court (to the clerk): You can enter the verdict against defendants Bartlett, Woodruff and Nitchie, for $8,000, and a disagreement as to defendant William M. Smith.

The verdict was entered accordingly.

Counsel for defendants: I move to set aside that verdict as no verdict. I move to enter upon the record that the jury have disagreed upon the issues presented to them. I move to discharge the jury, as they should be discharged in the case of no verdict. I also move to set aside the verdict on the usual ground mentioned in section 999 of the code.

The Court: Each of those motions is denied.

Defendants' counsel excepts.

Plaintiffs' counsel: I move for an allowance.

The Court: Yes; the plaintiffs are entitled to an allowance of five per cent.

Defendants' counsel: I desire a stay of 60 days to make a case.

Plaintiffs' counsel: We have no objection to that.

The Court: I will give you 60 days to make a case with a stay of all proceedings after notice of entry of judgment. The plaintiffs can enter their judgment and serve notice, and then all other proceedings are stayed for 60 days.

470 *Deposition of Charles S. Fairchild.*

First interrogatory. State your full name, occupation and residence.

1. Charles S. Fairchild; residence New York; occupation, Assistant Secretary of the Treasury of the United States.

Second interrogatory. When did you commence your duties as Assistant Secretary of the Treasury?

2. 14th of March, 1885.

Third interrogatory. When was your attention first called or directed to the subject of the disinfection of rags at the port of New York, and by whom?

3. I cannot remember that, but it was very shortly after I came into office, but with whom I do not remember.

Fourth interrogatory. What communications, or correspondence, or telegraphic messages were had between you and the health officer, William M. Smith, or the collector of customs of the port of New York with reference to the disinfection of imported rags, and especially as to rags on the vessels Exile, Vigilant and Battaglia, in the months of April, May and June, 1885. Please produce any letters or telegrams, or memorandums thereof, and attach true copies thereof in connection with your answer to this interrogatory and state fully?

4. April 14, 1885, telegram to the collector of the port of New York, a copy of which I now produce, file and annex hereto.

A letter dated April 14, 1885, of the collector of the port of New York, addressed to the Secretary of the Treasury (copy annexed).

Telegram to the collector, New York, dated April 15, 1885 (copy annexed).

Letter to the health officer of New York, dated June 6, 1885 (copy annexed).

471 Letter from collector at New York, dated June 8, 1885 (copy annexed).

Circular, dated June 10, 1885, to collectors of customs and others (copy annexed).

Letter of collector of New York, dated June 11, 1885 (copy annexed).

Letter to the collector of New York, dated June 10, 1885 (copy annexed).

Letter from the collector of New York, dated June 16, 1885 (copy annexed).

A copy of the enclosure referred to in last preceding letter, and now produce and annex.

Letter to collector of New York, dated June 17, 1885 (copy annexed).

Letter from collector, dated June 19, 1885 (copy annexed).

A letter from Wm. M. Smith, health officer at New York; J. H. Raymond, health commissioner, and Gen. Alexander Shaler, president board of health, dated June 24, 1885 (copy annexed).

Letter from Wm. M. Smith, health officer, dated June 26, 1885 (copy annexed).

Letter to Dr. Wm. M. Smith, Dr. J. H. Raymond and Gen. Alexander Shaler, June 25, 1885 (copy annexed).

These papers embrace all the correspondence called for by this interrogatory, so far as my knowledge extends.

Fifth interrogatory. What person or persons representing, or claiming to represent the firm of "E. B. Bartlett & Co.," or any member thereof, or that of William M. Smith, health officer of the port of New York, in the winter or summer of 1885, conversed or communicated with you as to the disinfection of rags at the port of New York; state their names, if any, and what was said; state fully, giving dates and matter of conversation.

5. The only person whom I can definitely remember as representing the Bartlett Disinfecting Company was W. Scott Smith
472 who was here very often. What dates, I cannot remember,
in regard to this matter of the disinfection of rags. I cannot remember the dates or details. I cannot state fully what was said; it was the danger to the public health from permitting to come without disinfection, and urgent requests that every means should be taken by the Government to see that these rags were sent to the Brooklyn stores of Mr. Bartlett for disinfection; and also stated that all the parties interested in the disinfecting process had invested a large amount of money, and that if this request was not complied with they would lose money.

Sixth interrogatory. Did E. B. Bartlett, W. Scott Smith, Silas B. Dutcher, one or all, call upon and converse with you at Washington as to the disinfection of rags at the port of New York, in the months of March, April, May or June, 1885, and, if so, what was said by either of them on that subject? State fully.

6. I have stated what Mr. Scott Smith said. Mr. Bartlett: I have but a slight recollection of his being here once, and the general tenor of his conversation was the same as Mr. Smith's. Mr. Dutcher talked to me once. He said nothing particularly about the disinfecting, or about the stores of Mr. Bartlett, or anything of the sort,

but he talked about the danger to the health of the people, particularly in Brooklyn, if this disinfection was not carried on.

Seventh interrogatory. Are there any existing regulations of the Treasury Department with respect to the disinfection of rags?

7. The only regulation that exists, if it can be called one, is the circular to the collectors of customs and others, July 26, 1886. (Copy annexed.)

Eighth interrogatory. What actions or regulations did the Secretary of the Treasury assume or take with respect to the disinfection or non-disinfection of rags imported from other countries
473 since the 4th of March, 1885, and if any annex copies of such regulations.

8. The action taken and the regulations adopted from time to time, will appear in the several papers hereto*be*fore produced.

Ninth interrogatory. In the action taken by you, as shown by telegrams, letters or communications with either the health officer or collector of the port of New York, in regard to the landing or disinfection of imported rags in the year 1885. Was such action induced or assumed by reason of an additional power or authority over imported rags under special regulations of the Treasury Department, or was it merely in aid of the health officer of the port of New York, and under his advice or direction?

9. When I came to examine the laws on the subject, I was satisfied that there was no statute which gave the Secretary of Treasury any authority except in aid of the health officers of the ports.

Cross-interrogatories to be Propounded to the Witness, Hon. C. S. Fairchild, Assistant Secretary of the Treasury.

First cross-interrogatory. Do you find upon the files of your department a letter addressed to the Secretary of the Treasury dated December 11, 1884, by the committee of the State boards of health, and referring to an interview of that day, and the views of the health authorities respecting the dangers from imported rags, and the opinion of the committee requested by the Secretary of the Treasury, signed by—

H. P. WALCOTT, *Chairman*,
S. S. HERRICK, *Secretary*,

and a circular issued by the Treasury Department, December 22, 1884, entitled "Circular Importation of Old Rags," 1884, department 178, division of customs, and also two letters of instruc-
474 tions from the Secretary of the Treasury to the collector of customs at New York city, dated January 12, (1885), one of them designating the Baltic stores, Brooklyn, as the place for disinfecting rags imported from foreign countries, and appointing "Mr. Charles F. Kane, now an inspector of customs No. 127 at your port, and stationed at the Baltic stores, to act as such inspector," "to witness and certify to the process of disinfection." If so, please annex copies to this your deposition, and state if the instructions in the circular and letters above referred to controlled the importation and

discharge of rags from foreign countries at the port of New York; also, please annex a copy of the letter of the Treasury Department, dated March 7, 1885, to the collector of customs, New York, signed by Charles E. Coon, acting Secretary, respecting the disinfection of rags on a covered lighter anchored at quarantine, under the approval of the Treasury Department.

Also, please annex a letter from the Treasury Department to Dr. William M. Smith, dated December 18, 1884, signed H. F. French, Assistant Secretary, requesting Dr. Smith to examine the matter of the application of E. B. Bartlett & Co., to have their warehouse selected as a proper place for the disinfection of rags, and to furnish to the Treasury Department a statement of his views upon the subject.

First cross-interrogatory. To the first cross-interrogatory he saith: To the first branch of the first cross-interrogatory I answer: I find on file the several papers referred to, copies of which I produce and annex hereto as follows:

First letter from H. P. Walcott, chairman, and S. S. Herrick, secretary, a copy of which I now produce and annex hereto (marked by the commissioner for identification, Fairchild No. 17 A).

I also produce a copy of the inclosure contained in that letter and annex same hereto (marked by commissioner for identification, Fairchild 17 B).

475 Also copy of circular of December 22, 1884, and annex same hereto (marked by commissioner for identification, Fairchild No. 18).

Also a letter from H. F French, Assistant Secretary, to the collector of customs at New York, June 12, 1885, referring to application of Nesmith & Sons of New York, for designation of Empire stores at Brooklyn, for place of disinfection of rags, a copy of which I now produce and annex hereto (marked by commissioner for identification, Fairchild No. 19 A).

Also a copy of another letter of same date from the Secretary of the Treasury to the collector of customs at New York, designating the Baltic stores as the place of disinfection, which I now produce and annex hereto (marked by commissioner for identification, Fairchild No. 198).

The customs authorities at the port had these instructions, and are supposed to have followed them; whether they did or not, I have no personal means of knowing.

I produce a copy of letters of Acting Secretary Coon, dated March 2, 1885, and annex hereto (marked by commissioner for identification, Fairchild No. 21).

Second cross-interrogatory. Was the discharge and disinfection in New York of rags from foreign ports governed in May and June, 1885, by the U. S. Treasury Department or the U. S. collector of customs; and if so, pursuant to what circulars or instructions?

Second cross-interrogatory. To the second cross-interrogatory he saith: During the month of May, and up to the 18th of June, 1885, the discharge and disinfection of rags in New York was governed by Treasury circular, December 10, 1884, a copy of which I have already produced and filed, marked Exhibit Fairchild No. 18.

During the balance of the month of June, 1885, the matter
476 was regulated by the circular of June 10, 1885, a copy of
which has been heretofore filed, marked Exhibit Fairchild
No. 6.

Third cross-interrogatory. State when and for how long a time, and until what time the circular of the Treasury Department of December 22, 1884, marked 1884, department No. 178, division of customs, was in force, as governed the discharge and disinfection of rags from foreign countries in the port of New York?

Third cross-interrogatory. To the third cross-interrogatory he saith: It was in force until superseded by the circular of June 10, 1885.

Fourth cross-interrogatory. Were you made acquainted with the conclusions of the health officers at their conference at the Fifth Avenue hotel, April 23, 1885, respecting the sanitary measures necessary for the protection of public health in relation to imported rags, embodying the following resolution:

"That in view of the danger of other contagia, as well as that of cholera, all rags imported to this country should be disinfected, either at the place of departure or on their arrival here."

And did you after this date, and about June 11, 1885, or May 4, 1885, address a letter to the health officer of the port of New York respecting the conclusions at this conference? And were these conclusions communicated by the Secretary of the Treasury to the State Department, July 14, 1885, and to the consular officers of the United States by a circular of date July 17, 1885? Please annex copies of these papers.

Fourth cross-interrogatory. To the fourth cross-interrogatory he saith: The knowledge I have upon the subject was gained by certain correspondence, copies of which I file herewith, as follows:

First, by letter to the health officer of New York, dated May 29,
1885, a copy of which I now file and annex hereto (marked by commissioner for identification Fairchild No. 23 A).

477 Also a copy of enclosure contained in last-named letter, a
copy of which I now file and annex hereto (marked by commissioner for identification Fairchild No. 23 B).

Also from an authenticated copy of the resolutions adopted by the conference of health officers, which authenticated copy was sent to the department at the request of the department, a copy of which I now produce and annex hereto (marked by commissioner for identification Fairchild No. 23 C).

A copy of my letter of May 4th has already been produced and filed, and marked Exhibit Fairchild No. 22.

The conclusions of the conference of health officers were communicated by the Secretary of the Treasury to the Secretary of State under date of July 14, 1885, a copy of which communication I have already produced and filed as Exhibit Fairchild No. 18.

No circular of instructions was ever issued upon the subject-matter of this inquiry.

Fifth cross-interrogatory. Did you ever have any personal acquaintance or direct communication with Dr. William. M. Smith on the subject of these cargoes on the Vigilante and Battaglia, of the methods of rag disinfection?

If yea, if it were by letter please annex the same, or a copy thereof, and of your letter to him of May 1, 1885, and of any reply received.

Fifth cross-interrogatory. To the fifth cross-interrogatory he saith: No; I never saw Dr. Wm. M. Smith, and all my correspondence with him upon this subject has already been produced and filed.

Sixth cross-interrogatory. Was proof presented before you in June, 1885, by the testimony of the captain of the Vigilante, and by the log of the Vigilante, and by admissions of the consignees of the rags, that some of the rags were shipped in Japan up to the 15th
478 of January, 1885, and did you, on the 5th of June, 1885,
telegraph to the collector of customs at New York as follows: "As to rags per Vigilante and Weissenhorn, from Japan, which importers claim were mostly on board prior to January first, you are directed to submit all facts to Health Officer Smith, and to be governed by him in the matter."

Sixth cross-interrogatory. To the sixth cross-interrogatory he saith: I remember that the captain of one of these vessels was here and produced his log, but I cannot remember the matter of the dates, &c. There was a telegram sent, and I now produce a copy of it and annex same hereto (marked by commissioner for identification Fairchild No. 24).

Seventh cross-interrogatory. Was the answer of Dr. William M. Smith, health officer of the port of New York, referring to the above telegram, dated June 6, 1885, forwarded to you? And if so, please annex the same, or a copy thereof, to this deposition, and also a copy of the letter of the collector of customs referring to the same.

Seventh cross-interrogatory. To the seventh cross-interrogatory he saith: The telegram referred to has not been found in the files of the department, nor do I find a copy of the letter in reply thereto.

Eighth cross-interrogatory. Did the Secretary of the Treasury, on or about July 12, publish the methods of disinfection of old rags imported from foreign countries, and ask the honorable the Secretary of State to communicate the results arrived at to United States consuls, and was such communication made by a circular dated July 17, 1886, and if so, please annex copies of letter and circular?

Eighth cross-interrogatory. To the eighth cross-interrogatory he saith: This interrogatory has already been answered.

Ninth cross-interrogatory. Was W. Scott Smith present at
479 a hearing before you of Messrs. Lockwood and McClintock
and consignees of the cargoes of the Vigilante and Weisenhorn on or prior to June 5, 1885, and were any statements then made as to the facts whether any contagious disease prevailed in Japan in the year 1884, and whether the rags in question were shipped prior to January 15, 1885?

Ninth cross-interrogatory. To the ninth cross-interrogatory he saith: I can't remember anything about that.

Tenth cross-interrogatory. Was your official action influenced by any of the statements above referred to or any other statements, and if so, what statements?

Tenth cross-interrogatory. To the tenth cross-interrogatory he saith: That I can't remember.

Eleventh cross-interrogatory. Do you know whether cholera, small-pox or any contagious disease was prevalent in Japan in the year 1884, and if so, what was the fact?

Eleventh cross-interrogatory. To the eleventh cross-interrogatory he saith: No, I don't know. I was not in Japan.

Twelfth cross-interrogatory. Was it your intention, in the instructions from the Treasury Department to the collector of the port of New York about June 10, 1885, or in the circular of the same date to provide for the free discharge of rags from Eastern countries without disinfection?

Twelfth cross-interrogatory. To the twelfth cross-interrogatory he saith: My intention was to put the whole responsibility of it on the health officers of the ports.

Thirteenth cross-interrogatory. Did the Treasury Department designate in 1885, at any time, any stores or warehouses for the reception of rags from foreign countries, and if so, what stores for the port of New York?

Thirteenth cross-interrogatory. To the thirteenth cross-in-
480 terrogatory he saith: So far as any designation is concerned,
it will appear in the correspondence hereto*be*fore submitted.

Fourteenth cross-interrogatory. Were the cargoes of the Vigilante and Battaglia sent to "general orders" by U. S. officers, and if so, by whom, and state whether disinfection was required?

Fourteenth cross-interrogatory. To the fourteenth cross-interrogatory he saith: That I don't know; you will have to inquire at the port.

Fifteenth cross-interrogatory. Did the Treasury Department receive a telegram on June 10, 1885, from the consignees of the rags per Battaglia, arriving at New York, June 5, 1885, and on the 11th of June, did you address a letter to the collector of New York, referring to such telegram, and directing the submission of the fact to the health officer of New York, and requiring an assurance from him before the rags were landed, that the permit required by the circular of June 10, 1885, had been duly issued, and if so, please annex copies of such telegram of such letter, and of the circular of June 10, 1885, to your deposition.

Fifteenth cross-interrogatory. To the fifteenth cross-interrogatory, he saith: No telegrams from the consignee of rags per this vessel, are to be found on the files of this department. Copy of the letter of June 10, 1885, I now produce and annex hereto (marked by commissioner for identification, Fairchild No. 25). The circular of June 10, 1885, has already been produced and filed and marked Exhibit Fairchild No. 7.

Sixteenth cross-interrogatory. Do you know by whose orders the rags on board the Vig-lante and the Battaglia were stored and disinfected, and if so, state the detail.

Sixteenth cross-interrogatory. To the sixteenth cross-interrog
tory, he saith: I do not.

Seventeenth cross-interrogatory. Were the cargoes of the Vi
lante and Battaglia in or after June, 1885, ordered to be d
481 infected by the collector of the port of New York, and if so, was it under the authority of the Treasury Department, and was there a report of such disinfection by an agent or inspector of the custom-house in New York, and if you have knowledge of such order or inspection, please annex copies to your deposition?

Seventeenth cross-interrogatory. To the seventeenth cross-interrogatory, he saith: So far as I know of, and have been able to ascertain, the files of the department fail to show any such order to report.

Eighteenth cross-interrogatory. The cargoes of rags from Eastern countries, now admitted to free discharge without disinfection in American ports?

Eighteenth cross-interrogatory. To the eighteenth cross-interrogatory, he saith: That I don't know. The health officers know that. We have nothing to do with it here at all.

Nineteenth cross-interrogatory. If in answer to the third interrogatory you say that your attention was called to the subject of the disinfection of rags at the port of New York, by any one, state whether either Mr. George Jones, Augustine Smith, B. F. Einstein or A. C. Chapin, ever spoke in your presence, or conversed with you on the subject, and if so, which of them, or when and where, or whether either of them, ever in your presence, spoke to, conversed or addressed Mr. Daniel Manning, the Secretary of the Treasury, on the subject, and if so, which of them, and when and where.

Nineteenth cross-interrogatory. To the nineteenth cross-interrogatory, he saith: Augustine Smith, I think, I was introduced to by Collector Robertson in New York, and had a short conversation with him on the subject—when, I don't remember.

Einstein I don't remember about at all.

482 Chapin I think, never spoke to me about it, except he represented somebody who had a disinfecting machine that he would like to have adopted by the department.

George Jones, I never saw George Jones. I have no knowledge of the subject at all.

Twentieth cross-interrogatory. State whether either of such persons addressed to you or to Mr. Manning, any letters or telegrams, and if so, which one of them, and give the dates?

Twentieth cross-interrogatory. To the twentieth cross-interrogatory, he saith: I don't remember any such, nor upon examination have such been found upon the files of the department.

CHARLES S. FAIRCHILD.

483 PLAINTIFFS' EXHIBITS.

PLAINTIFFS' EXHIBIT A. April 19, 1887.

PORT OF NEW YORK,
QUARANTINE, *May 30th*, 1885.

Arrive ship "Vigilant,"
Commander, W. H. Gould,
Days' passage, 130 days,
From Hiogo, Japan,
Crew, 24,
Passengers, family (3),
Cargo general (rags excepted),
The vessel has permission to proceed.
(Signed) E. B. SANBORN,
D'p'y Health Officer.

This permit to be exhibited at the office of the board of health of the city of New York, (if docked on the New York side) at the city of Brooklyn board of health if on the Brooklyn side, within twenty-four hours (Sundays excepted) of your arrival under penalty of two hundred dollars.

I hereby certify that the above is a correct copy of the pass issued by health officer of the port of New York, and is now on file in this office.

EMMONS CLARK, *Secretary.*

PLAINTIFFS' EXHIBIT B. April 19, 1887.

Copy not to be used.

Form 19 B.

PORT OF NEW YORK,
QUARANTINE, NEW YORK, *June* 10, 1885.

I do hereby certify that 5,721 bales of rags* hides or skins marked per ship "Vigilant" from Hiogo, (Japan) to be disinfected are not from a cholera-infected port.

(Signed) WM. M. SMITH,
Health Officer.

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*Erase words that are not to be used.

Baltic stores.

Written across face: Duplicate—duplicate.

484 PLAINTIFFS' EXHIBIT C. April 19, 1887.

Declaration of Exporter.

I, Wm. Bohlens, of the firm of —— Hiogo, Japan, do solemnly and truly declare that each and every bale mentioned and described in invoice No. 94, marked and numbered as follows, to wit: FPC 500 bales being 500 bales of cotton rags, shipped by the S. V. "Vigilant," Capt. Gould, in Dec'b'r, 1884, —— to New York, are Japan domestic rags, and are not reshipments; and further that the said rags have neither been collected, packed, nor otherwise placed, nor passed through any district infected with cholera or other infectious disease.

Dated at Hiogo, Japan, this 11th day of February, 1885.

WM. BOHLENS.

Certificate of Acknowledgment.

I, T. McF. Patton, consul of the United States of America, at Osaka and Hiogo, Japan, do hereby certify that the above and foregoing declaration was signed in my presence by Wm. Bohlens, managing partner of the firm of Meyer & Co., who is personally known — to be the person he represents himself to be, and thereupon acknowledged to me that he executed the same for the use and purpose therein set forth.

I do further certify that I have no official or personal knowledge of any case of cholera existing in Japan at the date of the above-mentioned invoice.

In witness whereof, I have hereunto set my hand and official seal at Hiogo, Japan, this 11th day of February, A. D. 1885.

T. McF. PATTON,
United States Consul.

485 PLAINTIFFS' EXHIBIT D. April 19, 1887.

Declaration of Exporter.

I, E. Popp, of the firm of Meyer & Co., of Yokohama, Japan, do solemnly and truly swear that each and every bale mentioned and described in invoice No. 240, marked and numbered as follows, to to wit: ◇M◇ 1 | 420, being four hundred and twenty bales of cotton rags, shipped by the American ship "Vigilant" to New York, are Japan domestic rags and are not reshipments; and further that the said rags have neither been collected, packed, nor otherwise placed, nor passed through any district infected with cholera or other infectious disease.

Dated at Yokohama, Japan, this tenth day of February, 1885.

E. POPP.

Sworn to before me—

GEO. E. RICE,
U. S. Vice-consul General.

Certificate of Acknowledgment.

I, George E. Rice, vice-consul general of the United States of America at Kanagawa, Japan, do hereby certify that the above and foregoing declaration was signed in my presence by E. Popp, of the firm of Meyer & Co., at Yokohama, who is personally known to me to be the person he represents himself to be, and thereupon acknowledged to me that he executed the same for the use and purpose set forth.

I do further certify that I have no official or personal knowledge of any case of cholera existing in Japan at the date of the mentioned invoice.

In witness whereof, I have hereunto set my hand and official seal at Kanagawa, Japan, this tenth day of February, A. D. 1885.

GEO. E. RICE,
United States Vice-consul General.

486 *Declaration of Exporter.*

I, Chs. Braisy, of the firm of Meyer & Co., Hiogo, Japan, do solemnly and truly declare that each and every bale mentioned and described in invoice No. 91, marked and numbered as follows, to wit:

Meyer & Co. 1,500 bales
Meyer & Co.
Sup. Jap. rags. 500, being 2,000 bales of cotton rags, shipped by the S. V. "Vigilant," Capt. Gould in December, 1884, to New York, are Japan domestic rags, and are not reshipments; and further that the said rags have neither been collected, packed, nor otherwise placed, nor passed through any district infected with cholera or other infectious disease.

Dated at Hiogo, Japan, this 11th day of February, 1885.

CHS. BRAISY.

Certificate of Acknowledgment.

I, T. McF. Patton, consul of the United States of America at Osaka & Hiogo, Japan, do hereby certify that the above and foregoing declaration was signed in my presence by Chs. Braess, managing partner of the firm of Meyer & Co., who is personally known to me to be the person he represents himself to be, and thereupon acknowledged to me that he executed the same for the use and purpose therein set forth.

I do further certify that I have no official or personal knowledge of any case of cholera existing in Japan at the date of the above-mentioned invoice.

In witness whereof, I have hereunto set my hand and official seal at Hiogo, Japan, this — day of February, A. D. 1885.

T. McF. PATTON.
[SEAL.] *United States Consul.*

487 PLAINTIFFS' EXHIBIT E. April 19, 1887.

Quarantine Regulations of the Port of New York.

QUARANTINE, S. I., *August 9th*, 1884.

In view of the possibility that cholera may be introduced by vessels arriving at this port, and for the purpose of protecting the people from the disease, notice is given to all whom it may concern, that the following regulations will be enforced at the New York quarantine:

First. All vessels on which cholera develops during the voyage to this port will be subject to detention until the sick are removed to hospital, the well to the quarantine of observation, and the vessel properly cleansed and disinfected. Vessels with cargo from an infected port, or whose history affords a reasonable suspicion of its being infected, will be required to discharge cargo in quarantine.

Second. Passenger vessels will be required to furnish the quarantine officer a passenger list with the name and starting place (country and town) of each passenger. The baggage of passengers from an infected district or section of country bordering thereon, must be kept separate from other baggage, that it may be accessible to the health officer for purposes of disinfection. Mails from France and such other countries as may become infected with cholera, should be isolated in a well-closed apartment to avoid delay, and the necessity of disinfecting those which come from non-infected countries.

Third. Vessels with cargo from infected ports, after the disinfection of the cargo, will discharge in quarantine in order that the vessel may be cleansed and disinfected before proceeding to the wharves of the city.

488 Fourth. Cargo that has been shipped from an infected port or district to a healthy port, and reshipped from such port, will be subjected to the same treatment that it would if shipped directly from an infected port. Vessels with cargo wholly or in part of rags or hides from an infected port or district will not be given pratique. Vessels with rags from healthy ports will be required to furnish satisfactory evidence that they have not been reshipped, and that they have been gathered in districts where no suspicion of cholera exists, in default of which such cargo will be subject to the regulation which relates to such cargo from an infected port.

In this connection the undersigned takes occasion to offer a few words of advice. Masters are earnestly enjoined to secure perfect cleanliness and ventilation in all parts of the vessels under their command.

Surgeons of passenger steamers are admonished to exercise the utmost vigilance in the daily inspection during the voyage of the crew and all classes of passengers under their charge that the earliest symptoms of cholera may be detected and the sick properly isolated.

While the weight of testimony of many whose observations entitle their opinion to much credit, goes far to prove that the disease is not communicable from the person of the sick, the same class of observers incline to the belief that their dejections subjected to the favoring conditions which filth and imperfect ventilation supply give rise to the dreaded contagion.

In view of these facts, and the necessarily imperfect accommodations for the cholera patients on board ships, a disinfecting solution of sulphate of iron or chloride of zinc should be freely used to receive the dejections of the sick and disinfect all closets and lavatories.

WILLIAM M. SMITH,
Health Officer, Port of New York.

489 (Written on back:)

The evidence referred to must consist of affidavits made by the original shipper before the U. S. consul at the port of shipment that the rags have not been gathered in cholera-infected districts, and the certificate of such consul that the person making the affidavit is a man of character and entitled to credit.

W. M. S.

PLAINTIFFS' EXHIBIT F. April 19, 1887.

Circular.

Old rags not to be landed.

1884. Department No. 145, customs.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *August* 30, 1884.

To officers of the customs and others interested:

Notice is hereby given that the unloading of old rags arriving at ports of the United States from foreign ports on and after the first proximo is prohibited for three months from that date.

CHAS. E. COON,
Acting Secretary.

490 PLAINTIFFS' EXHIBIT G.

Sanitary bureau, health department, No. 301 Mott street.

No. 226. NEW YORK, *June* 1, 1885.

Permission is hereby granted Lockwood & McClintock, consignees of 2,920 bales rags now on board the ship "Vigilant," from Hiago, to land and store said rags, provided the same be not broken from the bulk in the bales they are now in, and that the same be kept tightly bound with iron straps or cords, and in the same condition while they remain within the limits of the city and county of New York.

This permit is granted in accordance with a guarantee to the same effect.

W. DE F. DAY, M. D.,
Sanitary Superintendent.

491 PLAINTIFFS' EXHIBIT H. April 19, 1887.

N. Y. Cat. No. 516 B.

Permit to Land Free Goods. 78127.

DISTRICT AND PORT OF NEW YORK.

To the inspector:

We certify, that Lockwood and McClintock *has* made due entry, according to law, of the following merchandise, imported in the b'k "Battaglia," —— ——, master, from Leghorn. The goods being exempt from duty by law permission is hereby given to land the same, viz:

Marks.	Numbers.	Description of merchandise.	Send to appraiser's stores.
L F B			
All linen PP......	1/5		
—"— SS......	6/10		
◇ F B			
L PP......	96/125	One hundred and fifty bales rags.	Wh'f.
SS......	151/170		
PC......	36/55		
SCX......	1/5		
SC......	16/25		
	1/50		

Leghorn PP.
Custom-house, June 27, 1885.
H. W. GORMLEY, R. WYNKOOP,
Naval Officer. *Collector.*

The dist. officer will allow the within rags to be delivered.
To the inspectors.

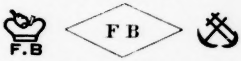
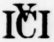
H. S. BEATTIE, *Surveyor.*

492 PLAINTIFFS' EXHIBIT I.

(Also defendants' Exhibit 13.)

PORT OF NEW YORK,
QUARANTINE, NEW YORK, *June* 17, 1885.

I do hereby certify that 450 bales of rags marked

 150 bales  300 bales per BK. "Battaglia" from Leghorn to be disinfected at Robbins' reef, if health commissioner of Brooklyn will not give permit for Baltic stores.

(Signed) WM. M. SMITH,
Health Officer.

(Over.)

Inasmuch as there is no evidence that these rags are not infected they cannot be discharged in Brooklyn until they bring the usual certificate from the health officer.

J. H. RAYMOND,
Com. of Health.

B'klyn, June 17, 1885.

Exhibit K is the same as Exhibit R, except as to the amount being $409.25.

PLAINTIFFS' EXHIBIT L. April 19, 1887.

(Was also annexed to affidavits in Defendants' Exhibit 19.)

Health officer's department, State of New York.

QUARANTINE, S. I., *June* 6, 1885.

(Copy.)

Wm. H. Robertson, collector of the port of New York.

SIR: Yours of this date is received in which you refer to a 493 telegram from the honorable Secretary of the Treasury referring to me the matter of the disinfection of the rags on the "Vigilante" and "J. Weissenhorn" from Japan.

I am aware of the "instructions of the Treasury Department requiring the disinfection of all old rags shipped on and after the 1st of January last."

I am also aware that the "bills of lading therefor are dated previous to the 31st of December, 1884," which, if true under the rule and authority of the Treasury Department would exempt the "old rags" on those vessels from disinfection: I am also aware that there is a conflict of testimony in relation to the date of this shipment, an affidavit has been submitted to me in which the affiant declares that he has personally examined the log of the "Vigilante" and that the same was produced before Assistant Secretary Fairchild, and "it appeared by it that rags were received on board of said ship up to the 16th of January, 1885, and that upon being questioned Captain Gould admitted having received rags until nearly the date of sailing, and that he had signed a bill of lading for said rags dated in December, 1884."

The rule of the Treasury Department for disinfection of all rags "shipped on and after the first of January, 1885," has not and will not influence the action of the health officer at the port of New York in reference to the decision as to the disinfection of the rags on the ships "Vigilante" and "J. Weissenhorn." But the evasion of the rule by incorrect dates in the bill of lading, or otherwise, may impair the confidence of the quarantine authorities in such statements as relate to the existence and prevalence of contagious or infectious diseases at the port of departure, and the country adjacent thereto. The apprehension that the contagion which gives rise to some of the most prevalent and fatal of the contagious diseases in our country, is shared not only by all classes of unprofessional people, but
by many medical men and sanitarians. That this appre-
494 hension has been unwisely stimulated among the former, by
sensational articles in the press concerning the danger to life and health arising from the admission of "old rags" from foreign ports, there is no doubt. The fact, nevertheless, exists, that a large majority of the officials in charge of the maritime quarantines of the country, and of those who constitute boards of health in interior communities, believe that "old rags" are a prolific source of contagious diseases.

George M. Sternberg, surgeon U. S. A., perhaps the most eminent of the investigators of the causes of contagious and infectious diseases in this country, in a recent communication to the undersigned says, "It is difficult to make a general rule which will be just to those engaged in importing rags, without taking any risk so far as the public health is concerned. But it seems to me that there will be less injustice in a rule to which no exceptions are made, than in leaving the matter to the individual judgment of the health officers of our several seaport cities." * * * "I am satisfied that the below-named infectious material, without any loss of specific infectious power, viz: Articles infected by contact with patients having yellow fever, small-pox or scarlet fever, or with the germs of anthrax (malignant pustule), sym-tomatic anthrax (black leg), pleuro-pneumonia of cattle and tuberculosis." * * * "When we consider the degraded condition of the rag-pickers in the populous cities of Europe and Asia, and the localities in which their collections are largely made, it seems to be beyond question that infectious material of various kinds must frequently find its way into the bales of rags which are shipped to this country; I am therefore in favor of the disinfection of all old rags by the very simple but effective method of subjecting them to superheated steam."

The following extracts are made from a recent communi-
495 cation from the secretary of the State board of health of Michi-
gan, under date of March 21st, 1885.

"Before closing this report I would desire briefly to allude to the source of the small-pox in this city. In most all the cases it has been directly traced to those engaged in picking over rags in our paper mills. The largest proportion of these rags, particularly the best of linen 'stock,' are imported in bales from France, Italy, or Germany, one can easily imagine that we have here a never-failing source or contagion, and that these rags, collected from all sources, hospitals, pest-houses, etc., form a germ from which many of our epidemics originate." * * *

"Cannot some remedy be devised or some means be introduced to disinfect these rags previous to sending them on their mission of death and disease through the United States?" * * * "I am very confident that contagious diseases may be spread in this way. Scarlet fever is frequently reported to this office, as contracted from old clothing disused for weeks or months, but previously in contact with the sick."

With the public apprehension stimulated to an unusual degree, as to the danger of the admission of contagious diseases into the country by means of rags from foreign ports, and the indorsement of that apprehension by the conference of health authorities, held at Washington, D. C., and with the conviction which has subsequently been confirmed, that the germs of cholera yet existed on the continent of Europe, it was considered proper by the undersigned that a meeting of the representatives of other health and sanitary organizations should be convened to agree upon the measures necessary to protect the public health.

Agreeable to notices issued, the following-named persons met at the Fifth Avenue hotel, April 23d, 1885, viz: Dr. Stuart, health officer of Baltimore; Dr. Lindsay, health officer of New Haven;
Dr. J. H. Raymond, health commissioner of Brooklyn; Dr.
496 A. L. Carroll, secretary of the New York State board of
health, and Dr. Wm. M. Smith, health officer at the port of
New York.

In connection with the conclusions concerning other sanitary measures, considered necessary at our maritime quarantines for the protection of the public health, the following resolution was adopted in relation to imported rags, to wit: "That in view of the danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at the place of departure, or on their arrival here."

The conclusions of the meeting were withheld from public announcement until the secretary of the meeting, Dr. A. L. Carroll, should forward copies to other representatives of our maritime quarantines and boards of health, who were invited to be present at the meeting referred to, but for various reasons could not attend, for their dissent or concurrence.

Under date of May 8th, Dr. Durgin, of the Boston board of health, in a communication to Dr. Carroll, suggested the following addition to the conclusions of the conference.

"That in the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry, except when accompanied by satisfactory evidence in writing that they have not been collected or baled in any district or place contiguous thereto, in which cholera, yellow fever, small-pox, typhus fever, scarlet fever, diphtheria or the plague has prevailed during any part of the twelve months last preceding said collection."

Subsequently under date of June 1st inst., the Boston board of health of which Dr. Durgin is the honored president, adopted the following regulation: "Ordered, that on and after this date all rags arriving at this port from any foreign port shall, before being discharged, be disinfected under the supervision of an officer of this board and in a manner satisfactory to this board."

497 The unreliable character of the evidence which the affidavits of persons interested in the shipment of articles of commerce to this port, as to the existence or prevalence of contagious or infectious diseases at foreign ports or in foreign countries has been illustrated in many instances in the experience of the undersigned. The bills of health from foreign ports are unfortunately, often unreliable, when not issued under the supervision of a medical officer attached to the staff of the United States consul. For illustration, the consular bills of health from London have been clean bills in most instances, before the appointment of the medical officer now attached to that consulate, notwithstanding the fact, that hundreds of cases of small-pox existed in the city of London at the time the bills were issued.

The undersigned does not claim that it is necessary for the protection of public health, that all rags should be disinfected.

But it is impossible to determine what may or may not be admitted with absolute assurance of safety. The attempt to do this at the New York quarantine for the year past has been one of the most difficult and vexatious of the duties of the health officer.

If exceptions are made in the disinfection of rags, carelessness, indifference or the deceptions that may be practiced by the parties in interest at the port of shipment may neutralize all the benefit, which has been or may be accomplished by the exercise of discrimination and vigilance at the port of entry.

It seems therefore advisable that for the present the rule of disinfection of rags should be general, and that for reasons which have been set forth the rags on the "Vigilante" and "J. Weissenhorn" should not be an exception to the rule.

Respectfully,

WM. M. SMITH,

Health Officer, Port of New York.

498 PLAINTIFFS' EXHIBIT L a. April 19, 1887.

Circular.

Importation of old rags.

1885. Department No. 81, division of customs.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 10, 1885.

To collectors of customs and others:

Whereas it has been conclusively shown to the department that, under existing laws, no general regulation can be legally framed whereby the disinfection of old rags can be accomplished in foreign ports to the satisfaction of the several health authorities: Therefore, it is ordered—

I. That all circulars of this department concerning the disinfection of imported old rags are hereby revoked; and that all old rags hereafter imported from foreign countries shall only be admitted to entry at the custom-house upon the production of permits from the health officers at the ports of importation, duly authorizing the landing of the same.

II. Vessels carrying old rags, arriving at any United States quarantine, will be detained by the quarantine officers and held subject to the order of the proper health authorities at the port of destination.

DANIEL MANNING, *Secretary*.

499 PLAINTIFFS' EXHIBIT M. April 19th, 1887.

J. T.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June 6th*, 1885.

SIR: I have received from the Hon. Secretary of the Treasury a telegram, dated the 5th instant, in the following words:

"As to rags per 'Vigilant' and 'Weissenhorn,' from Japan, which importers claim were mostly on board prior to January first, you are directed to submit all facts to Health Officer Smith, and to be governed by him in the matter."

You are aware that instructions of the Treasury Department require the disinfection of all imported rags shipped on and after the 1st of January last. The importers of the rags in question present bills of lading therefor dated on or before December 31, 1884, but they fail to offer satisfactory evidence to substantiate the truth of the bills of lading as to the dates on which the rags were actually placed on board of the vessels; on the contrary, it is understood that some of the rags were placed on board after the 1st of January.

Will you be pleased to advise me whether, in your judgment, as the health officer of the port, the rags may, with safety to the public health, be allowed to be landed and, without disinfection, to go into consumption?

Very respectfully, W. H. ROBERTSON, *Collector*.

Dr. Wm. M. Smith, health officer of the port, 71 Broadway, New York.

(Plaintiffs' Exhibit O is on page 36, *ante*.)

500 PLAINTIFFS' EXHIBIT P. April 20th, 1887.

Department of health, office of the commissioner, municipal department building, room 21.

BROOKLYN, N. Y., *March* 19, 1885.

Permits for landing rags, hides or skins in Brooklyn, will be granted only upon presentation of the following vouchers:

I. The certificate of the health officer of the port, on the blank supplied by this department for that purpose.

II. A bond upon a blank prescribed by this department.

Consular certificates, and all vouchers other than those mentioned above, must be submitted to the health officer of the port (at quarantine).

J. H. RAYMOND, M. D.,
Commissioner of Health.

PLAINTIFFS' EXHIBIT Q. April 20, 1887.

(Form 19 B.)

PORT OF NEW YORK,
QUARANTINE, NEW YORK, —— —, 1885.

I do hereby certify that —— bales of rags, hides or skins, marked ——, per —— from ——, are free from infection.

(Signed) —— ——,
Health Officer.

* Erase words that are not to be used.

501 PLAINTIFFS' EXHIBIT K.

Harbeck stores.
Watson stores.
Union stores.
Central elevator.

UNION STORES.

Baltic stores.
Robert stores.
Iron yards.

BROOKLYN, *October 9th*, 1885.

A | c. whom it may concern, under general order.

To E. B. Bartlett & Co., Dr.

Edward B. Bartlett,
Albert C. Woodruff,
John K. Bartlett,
Henry E. Nitchie,
No. 19 Old Slip, N. Y.

Ex "Vigilant," June 23d, '85. Rags. Ledger, 2; folio, 273.

Oct. 23d.	To stge. 4 mos. on 2,920 bl., 1,168,000 lbs., @ 2½c. per 100 lbs.	$1,168 00	
"	labor on 2,920 bl., 1,168,000 lbs., @ 3c. per 100 lbs.	350 40	
	To trucking to store 2,920 bls., 973 loads @ 50c.	486 50	
			$2,004 90
	(1,200 lbs. to a load.)		
	To bill rendered by the N. J. L. Co., for lighterage on 2,920 bales, @ 25c.		730 00
	Disinfection on 2,920 bales, @ $5.00 per ton		2,920 00
			5,654 90
	Allowed	$750 00	

Received payment under protest,

E. B. BARTLETT & CO.

Marked:

F. P. C.	500	bales.
Meyer & Co., selected	1,500	"
" superior	500	"
	420	"
	2,920	

Duplicate.

EXHIBIT R.

Ex Battaglia, per lighter, July 3, '85.

To E. B. Bartlett & Co., Dr.

Oct. 3.	To storage,	3 mos., on	150	bales rags @	2½	per 100 lbs.	78 75
	" labor	"	150	" " "	3c.	" " "	31 50
	" cartage	"	150	" " "	50c.	" 1,200. lbs.	44 00
	" lighterage	"	150	" " "	25c.		37 50
	" disinfection	"	150	" " "	$5	per ton	262 50
							454 25
	Less for allowances						45 00
							409 25

Weight, about 105,000 lbs.

Received payment under protest,

E. B. BARTLETT & CO.
Per M. E. BERRY.

502 PLAINTIFFS' EXHIBIT S.

(Exhibit Fairchild No. 24.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 5, 1885.

Collector of customs, New York:

As to rags per "Vigilant" and "Weissenhorn," from Japan which importers claim were mostly on board prior to January 1st, you are directed to submit all to Health Officer Smith, and to be governed by him in the matter.

C. S. FAIRCHILD,
Assistant Secretary.

Charge of Treas'y Dep't.

PLAINTIFFS' EXHIBIT V. April 19, 1887.

To all whom these presents shall come, Greeting:

Whereas, Samuel Webber Parker and Henry Blackman, both of the city, county and State of New York, are the original inventors of a new and useful improvement in apparatus for disinfecting baled rags and other fibrous material, and are also the original inventors of a new and useful improvement in the process of disinfecting rags and other fibrous material in bales under the following-described letters patent of the United States, to wit: Serial number

144,555, filed October 2nd, 1884, and serial number 146,309, filed October 23, 1884;

And whereas, letters patent of the United States numbered 309,488, dated December 16th, 1884, and numbered 311,360, dated January 27th, 1885, have been issued to the said Samuel Webber Parker and Henry Blackman to secure said new and useful improvement in apparatus for disinfecting baled rags and other fibrous material;

503 And whereas, the said Samuel Webber Parker and Henry Blackman did on the 24th day of November, 1884, sell and convey unto the Paper Stock Disinfecting Company, a corporation created by and existing under the laws of the State of New York, and having its principal place of business in the city of New York, all their estate, right, title and interest of, in and to the said letters patent which had been granted, but not then issued to secure said invention, and of, in and to all letters patent which should thereafter be issued to secure said inventions or either of them in the United States;

And whereas, the said Paper Stock Disinfecting Company did on the 9th day of June, 1885, license, authorize and permit Martin E. Berry, his heirs, executors, administrators and assigns solely and exclusively to make, use and sell the said improvement in apparatus for disinfecting baled rags and other fibrous materials, and solely and exclusively to make and use the said improvements in the process of disinfecting rags and other fibrous materials in bales under said letters patent in any and all parts of the port of New York, and also to use and control during the full period of the said license the plant and machinery owned by the Paper Stock Disinfecting Company, located at Baltic stores, Brooklyn, and on the barge "Erie;"

And whereas, the said Martin E. Berry, by an instrument bearing date the 9th day of June, 1885, sold, assigned, conveyed, transferred and set over unto the New York Disinfecting Company, a corporation created by and existing under the laws of the State of New York and having its principal place of business in said city of New York, all his estate, right, title and interest in said agreements contained, and the sole and exclusive right, power and authority in any and all parts of the port of New York, to make, use and sell said new and useful improvement in apparatus for disinfecting baled rags and other fibrous materials under said 504 letters patent numbered 309,488, and also by said license gave and granted unto the said New York Disinfecting Company the sole and exclusive right, power and authority in any and all parts of the port of New York to use the said new and useful improvement in the process of disinfecting rags and other fibrous materials in bales under said letters patent numbered 311,360;

And whereas, Edward B. Bartlett, Alfred C. Woodruff and Henry E. Nitchie, composing the firm of E. B. Bartlett and Company, are desirous of acquiring a license under all of said letters patent in any and all parts of the port of New York, to use said new and useful apparatus for disinfecting baled rags and other fibrous materials, and also to use said new and useful processes of disinfecting rags and other fibrous materials in bales in the port of New York:

Now, therefore, this agreement witnesseth, that for and in consideration of the sum of one dollar paid by the said E. B. Bartlett & Company to the New York Disinfecting Company, the receipt, whereof, is hereby acknowledged, the said New York Disinfecting Company doth hereby license, authorize and permit the said E. B. Bartlett and Company, their survivors, heirs, executors, administrators and assigns, for a term of two (2) years from the date of this agreement, solely and exclusively to use the said improvement in apparatus for disinfecting baled rags and other fibrous materials, and solely and exclusively to use the said improvement in the process of disinfecting rags and other fibrous materials in bales under all of said letters patent in any and all parts of the port of New York, and also to use and control during the full period of this license the plant and machinery now used or owned by the Paper Stock Disinfecting Company and by the New York Disinfecting Company, located at Baltic stores, Brooklyn, and on
505 the barge "Erie," with the express agreement that same shall
be returned in like good order as received at the end of —.

To have and to hold the license hereby granted to the said E. B. Bartlett and Company, their survivors, heirs, executors, administrators and assigns as a license only, and under the conditions and limitation hereinbefore expressed to the full end of the term of two years as aforesaid.

And the said E. B. Bartlett and Company, for valuable considerations, hereby covenant and agree for themselves, their heirs, executors, administrators, survivors and assigns to pay the Paper Stock Disinfecting Company the sum of one dollar per ton royalty upon all goods disinfected by them under the said processes or either of them during the term of this agreement; and the said E. B. Bartlett and Company, further covenant that the entire license, authority and permission hereby granted shall cease and be of no force or effect, but be duly revoked and cancelled, unless they shall well and truly recognize, fulfill and perform all the covenants herein contained, and unless they shall well and truly account for and pay over to the said Paper Stock Disinfecting Company, its successors and assigns, a royalty of one dollar per ton on all rags or paper stock disinfected by them by the use of the said new and useful improvements and of each thereof, in any and all parts of the port of New York, such royalty to be accounted for and paid over as often as once every three (3) months, and full and correct accounts to be kept of all rags and paper stock disinfected, to be open at all times to the inspection of the agent or attorney of said Paper Stock Disinfecting Company, its successors and assigns, and in case the said E. B Bartlett and Company, their survivors, heirs, executors, administrators or assigns shall at any time exclude or
refuse well and truly to keep and submit to the inspection
506 of the Paper Stock Disinfecting Company such accounts as
aforesaid, and to pay over one dollar per ton royalty as aforesaid, within ten days after written notice requiring said payment,

it shall be lawful for said New York Disinfecting Company, its successors and assigns, to file in the Patent Office a revocation of this license, and the same shall thereupon be revoked and shall cease and determine, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, the said New York Disinfecting Company has caused its corporate seal to be attached and these presents to be signed by its president and secretary this first day of August, 1885.

S. WEBER PARKER, *President.*
[SEAL.] W. S. SCOTT, *Secretary.*
E. B. BARTLETT & CO.

Witnessed by—
ALEXANDER KYLE.

To all whom these presents may come, Greeting:

In consideration of the sum of one dollar to the Paper Stock Disinfecting Company, a corporation created by and existing under the laws of the State of New York, in hand paid by Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, composing the firm of E. B. Bartlett and Company, the said Paper Stock Disinfecting Company hereby ratifies and confirms the agreement hereto annexed, made by the New York Disinfecting Company with the said E. B. Bartlett and Company, dated the first day of August, 1885, and grants and conveys to the said E. B. Bartlett and Company, the sole and exclusive right and license within the States
507 of New York and New Jersey, for the time specified in said agreement.

S. WEBER PARKER, *President.* [L. S.]
W. SCOTT SMITH, *Secretary.* [L. S.]
E. B. BARTLETT & CO. [L. S.]

Witnessed by—
ALEXANDER KYLE.

PLAINTIFFS' EXHIBIT X. April 19, 1887.

(Also Defendants' Exhibit 28 and Fairchild No. 21.)

TREASURY DEPARTMENT,
8567*d.* OFFICE OF THE SECRETARY,
H. B. J. WASHINGTON, D. C., *December* 18, 1884.

Dr. Wm. M. Smith, health officer, New York.

SIR: The department is in receipt of a letter from E. B. Bartlett and Co., dated the 15th instant, in which reference is made to the proposed circular of this department, touching the disinfection of rags after landing in the United States, and asking that their warehouse may be selected as a proper place for such disinfection.

They state that their stores and docks are situated at different points on the Brooklyn shore, affording ample room and facilities for the purposes of disinfection named in the circular.

I will thank you to examine the matter, and to furnish to this department a statement of your views upon the subject.

Very respectfully, H. J. FRENCH,
Assistant Secretary.

508 Plaintiffs' Exhibit Z is a certificate of the organization of the New York Disinfecting Company under the law of 1848. Capital stock, $60,000. Incorporators, Henry Blackman, Henry Albertis Brewer and John W. Holmes. Term, 50 years. Directors, the three above named with William Henry Shelp and Alexander Kyle.

PLAINTIFFS' EXHIBIT A A.

No. 10.

For 250 shares. Date Nov. 25, 1884. Issued to E. B. Bartlett of New York.

Received the above-described certificate.

November 26, 1884.

S. WEBBER PARKER.

Plaintiffs' Exhibits B B, C C, and D D are similar to A A, except that they are issued, B B and C C to George Howland, and D D to George Simpson.

509 DEFENDANTS' EXHIBITS.

DEFENDANTS' EXHIBIT 1. April 19, 1887.

CITY AND COUNTY OF NEW YORK, *ss:*

William H. Gould, being duly sworn, deposes and says:

I have been captain of the ship "Vigilante" since September, 1882. In July, 1884, I arrived in Yokohama. I sailed from there Nov. 20, 1884; we then had on board four hundred and twenty bales of rags or about that number. From there I sailed to Hiogo, reached there December 6th, 1884—commenced to take on more cargo. Brought to New York five thousand nine hundred and sixty-one bales of rags. Of these I took on five hundred and eighteen bales. These are the only rags I took on after January 1, between January 9 and January 17. My cargo was all ready and engaged when I reached Hiogo. My ship is of eighteen hundred tons. I continued to load. My ship lay about one and a half miles from shore and my cargo had to be lightered to the ship. My cargo consisted of sulphur, camphor, bamboos, shells, antimonia. The cargo was put on board as fast as we could unload it from the lighters.

WM. H. GOULD.

Sworn to this 9th day of June, 1885.

EMMONS CLARK,
Secretary Health Department.

DEFENDANTS' EXHIBIT 2. April 19, 1887.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June 9th*, 1885.

The inspector in charge of the ship "Vigilant" from Hiogo, Japan, under general order made June 3rd, 1885, will allow
510 to be landed, and will send on bonded lighters to Baltic stores (E. B. Bartlett & Co.'s south) for disinfection, all rags for which no permit shall have been received, and will make return thereof, as of an order or permit.

(Signed) R. WYNKOOP,
Dep. Collector.

J. J. Couth, D. N. officer.

DEFENDANTS' EXHIBIT 3. April 19, 1887.

Lockwood & McClintock, 276 Pearl street, New York.

JUNE 26TH, 1885.

Wm. M. Smith, M. D., Quarantine, S. I., N. Y.

DEAR SIR: Will you please send, or let us know where we can see and make, a copy of the affidavit referred to in your letter of the 6th inst., addressed to Hon. W. H. Robertson, collector, and oblige,

Very truly yours, LOCKWOOD & McCLINTOCK.

DEFENDANTS' EXHIBIT 4. April 19, 1887.

Lockwood & McClintock, 276 Pearl street, New York.

JULY 1ST, 1885.

W. M. Smith, M. D., Quarantine, S. I.

DEAR SIR: Your favor of the 30th ult. is rec'd. & for it pray accept our thanks. Our Mr. Lockwood will go to your office
511 on Friday next, leaving here on the 10 a. m. boat, to make a copy of the affidavit.

If it is inconvenient to you to be there then, will you be good enough to leave the affidavit with your clerk, with instructions that he allow Mr. Lockwood to take a copy, & oblige,

Very truly yours, LOCKWOOD & McCLINTOCK.

DEFENDANTS' EXHIBIT 5. April 19, 1887.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

W. Scott Smith deposeth and says that he was present at the hearing in Washington, D. C., before Assistant Secretary of the Treasury Fairchild, on Wednesday and Thursday, June 3rd and fourth, in reference to the rags on the ship "Vigilant," from Hiogo, Japan. That on the first day named the statement was made to

Secretary Fairchild by one of the owners of said rags, as well as by their counsel, that said rags had been loaded on said ship "Vigilant" during the month of December, 1884, as shown by a bill of lading signed by the captain, that on the following day, June 4th, the same parties appeared together with Captain Gould, the captain of said ship, who produced his log book, which was examined by Secretary Fairchild; that the owners of said rags, through counsel, admitted and stated that the statement made the day previous, as to the rags all being on board of said ship in December, was incorrect, and they desired to modify it. The log book being exhibited, it appeared by it that rags were received on board said ship up to the 16th day of January, 1885. That upon being questioned, Capt. Gould admitted having received rags until nearly the date of 512 sailing, and that he had signed a bill of lading for said rags dated in December, 1884.

W. SCOTT SMITH.

Sworn to before me this 6th day of June, 1885.

GEO. B. LAUCK,
[SEAL.] *Notary Public* (103), *New York County.*

DEFENDANTS' EXHIBIT 6. April 19, 1887.

TREASURY DEPARTMENT,
8567*d*. OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *November* 24, 1885.

Dr. Wm. M. Smith, health officer, port of New York.

SIR: I am in receipt of your letter of the 21st instant, in which you ask if any directions or orders have been issued since the 10th of June last, to the inspectors of the disinfection of rags, appointed to make such inspections at foreign ports or places of shipment.

In reply, you are informed that, inasmuch as department's circular of June 10, 1885, placed all matters in connection with the disinfection of imported rags within the jurisdiction of the health officers of the ports at which such rags are imported, no instructions on this subject have been issued by this department.

I enclose, however, a copy of a letter addressed, on the 14th of July last, to the Secretary of State, embodying the conclusions reached at a conference of the health officers of the different ports of the United States, which was held at the Fifth Avenue hotel, N. Y., on the 23d of April last, for the purpose of considering questions relating to quarantine.

513 It will be seen that the Secretary of State was requested to inform U. S. consular officers at foreign ports, that the disinfection of rags intended for shipment to the United States, should be accomplished in the manner required by the health officers of the ports to which the rags are consigned, and that the conclusions and requirements which were reached at the said conference, were subject to such modification by the health officers of the different ports, as might be deemed necessary by them from time to time, for

the purpose of preventing the introduction of disease into the United States. With such exception no instructions on the subject, have been isssued by the department.

Very respectfully,
C. S. FAIRCHILD,
Assistant Secretary.

(One enc.)

DEFENDANTS' EXHIBIT 6 A. April 19, 1887.

Circular.

Importation of old rags at Baltimore, Brooklyn, New Haven, and New York.

DEPARTMENT OF STATE, WASHINGTON, *July* 17, 1885.

To the consular officers of the United States.

GENTLEMEN: The following letter from the Secretary of the Treasury is hereby communicated to you for your information and guidance, viz:

TREASURY DEPARTMENT, *July* 14, 1885.

The honorable the Secretary of State.

SIR: Referring to the letter of this department addressed to you on the 11th ultimo concerning the importation of old rags, in which you were informed that the question of the disinfection of 514 such merchandise was to be determined by the health officers at the ports where the rags were imported, I have the honor to transmit herewith six copies of the conclusions of the conference held at the Fifth Avenue hotel, New York, April 23, 1885, for the purpose of considering questions relating to quarantine, at which the following health officers were present: Dr. Wm. M. Smith, New York; Dr. J. H. Raymond, Brooklyn, N. Y.; Dr. Stuart, Baltimore; Dr. Lindsay, New Haven, and Dr. A. L. Carroll, secretary of the New York State board of health.

It will be seen that the following conclusions with regard to such rags arrived at:

"4. That in view of the danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at the place of departure or on their arrival here.

"5. That if such disinfection be done abroad, it be required that either the rags be boiled for not less than thirty minutes, and dried before baling, or treated with superheated steam for not less than eight minutes, and in such manner as to be heated to or above 212 degrees Fahrenheit in every part.

"6. That inspectors should be appointed (by the department having control of the epidemic fund) to certify to the sufficiency of disinfection of rags according to the above rules, and that a consular endorsement be added to such certificate.

"7. That in the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry."

As these methods of disinfection differ somewhat from those heretofore required by this department, I will thank you to com-

municate with the different United States consuls in whose districts inspectors of rags have been heretofore appointed, and to inform them of such action on the part of the health officers
515 named, in order that if rags shipped to either of the ports
named are disinfected at the foreign ports the disinfection may be accomplished in the manner required by the health officers thereat.

It may be remarked that the regulations adopted at such conference are only applicable to the ports named, and that they are subject to such modifications as the health officers at such ports, respectively, may, from time to time, deem necessary for preventing the introduction of disease into the United States.

Very respectfully, D. MANNING, *Secretary*.

Consular officers will be expected to carry out the duties imposed upon them by this circular with great care and fidelity.

I am, gentlemen, your obedient servant,

JAS. D. PORTER,
Assistant Secretary.

DEFENDANTS' EXHIBIT 7. April 20, 1887.

(Exhibit Fairchild No. 20.)

Copy.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *M'ch 7th*, 1885.

Collector of customs, New York.

SIR: I transmit herewith copy of a letter of the 5th instant, from the Paper Stock Disinfecting Company of New York, in which it is stated that they are advised by cable, that several cargoes of rags from infected ports, are on their way to New York, and that the local health authorities will not permit these rags to go to the Baltic
stores for disinfection, but will require them to be disinfected
516 in the lower harbor before being landed. The company
therefore propose, to place disinfecting works in a covered lighter, and anchor it at quarantine, under the superintendence of the health officers and disinfect all rags coming from infected ports on board such lighter in the manner required by department's circular of December 22d, 1884.

The approval of this department to such arrangement is hereby granted, subject to the assent of the proper health officer.

Very respectfully,
(Signed) CHAS. E. COON,
Acting Secretary.

(Enclosed in Exhibit 7.)

(Copy.)

The Paper Stock Disinfecting Company, Temple court, 5 and 7
Beekman St., rooms 12 & 13.

NEW YORK, *M'ch 5th*, 1885.

Hon. Hugh McCulloch, Secretary of the Treasury.

SIR: We are advised by cable, that several cargoes of rags from infected ports are on their way to this city. Our local health officers will not permit these rags to go to the Baltic stores for disinfection, but will require them to be disinfected in the lower harbor, before being landed.

We propose to place disinfecting works on a covered "lighter," and anchor it at quarantine under the superintendence of the health officer and disinfect all rags coming from infected ports by superheated steam, in accordance with process No. 4 of the department's circular dated Dec. 22, 1884.

As there is urgent necessity for immediate action in order that such a "lighter" may be prepared, and that no delay may occur in the disinfection of such rags as may arrive, we respectfully ask that the department will give its approval to the location of such disinfecting works at quarantine, subject to the assent of the health officer.

Respectfully yours,
(Signed) THE PAPER STOCK DISINFECTING CO.
S.

517*a* DEFENDANTS' EXHIBIT 8. April 20, 1887.

(Rev. Stats., Secs. 2880, 2966.) N. Y. Cat. No. 467.

General Order to Send Merchandise to Public Store.

CUSTOM-HOUSE, PORT OF NEW YORK,
A. W. H. COLLECTOR'S OFFICE, *June* 3, 1885.

The inspector on board the ship Vigilant, Gould, master, from Hiogo, will allow to be landed, and will send to the public store No. —, E. B. Bartlett's south, all merchandise for which no permit or order shall have been received by him contrary to this direction, except perishable articles, gunpowder and explosive substances, and neat-cattle, which he will retain on board, and send notice thereof to this office. He may allow to be landed potatoes or green fruit, provided a general permit to retain cargo on wharf be produced to him. The usual weighing, gauging, and measuring to be done before sending goods under this order.

S. HOPPER,
Deputy Collector.

L. R. MAY,
For Naval Officer.

Bartlett's south.

The words "rags, A. W. H.," written across the face.

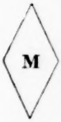
517 Defendants' Exhibit 9. April 20, 1887.

Disinfected. (N. Y. Cat. No. 973.)

General Order.

No. 3. June, 1885.

Received in public store, E. B. Bartlett's south, from on board ship "Vigilant," —— ——,

master, from Hiogo  four hundred and twenty bales.

No mark. Forty bales.
——, C. H. Cart No. —.

J. SEGOINE, *Storekeeper.*

Exhibits 10, 11 and 12 are similar receipts.

Defendants' Exhibit 13 is the same as Plaintiffs' Exhibit I, and is here omitted by consent.

There is no Exhibit 14.

518 Defendants' Exhibit 15. April 20, 1887.

Department of health, office of the commissioner, Municipal Department building.

Brooklyn, N. Y., *June 15th*, 1885.

To whom it may concerm:

No permits will be granted for the discharge in Brooklyn of any rags which, in the judgment of the health officer of the port, need disinfection, until they shall have been disinfected to his satisfaction; a certificate from him to that effect will, in all cases, be required.

Respectfully, J. H. RAYMOND, M. D.,
Commissioner of Health.

Defendants' Exhibit 16. April 20, 1887.

J. H. Raymond, M. D. Department of health, office of the commissioner, Municipal Department building, room 21.

J. H. Raymond, M. D., commissioner; R. M. Wyckoff, M. D., secretary; Geo. F. Elliott, counsel.

Brooklyn, N. Y., *June* 17, 1885.

My Dear Dr.: As the machinery at Robbins' reef will not be in thorough working order for several days, I will permit the landing of rags on your usual certificate for a few days longer; probably everything will be in shape by Tuesday of next week; of course, this applies only to those that are certified as not from a cholera-infected port or locality.

Very sincerely, J. H. RAYMOND, *Com.*

519 The application for the "Bataglia" has just been made, and judging from your endorsement that you had doubts about the rags, I refused a permit.

J. H. R.

DEFENDANTS' EXHIBIT 17. April 20th, 1887.

TREASURY DEPARTMENT,
WASHINGTON, D. C., *December*, 1884.

Persons receiving this proposed circular are requested to send such suggestions as they deem proper, by way of amendment, to the Secretary of the Treasury before the 20th instant.

H. F. FRENCH,
Assistant Secretary.

Circular.

Importation of old rags.

1884. Department No. —.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* —, 1884.

To collectors of customs and others:

All prior circulars of the department concerning the importation of old rags imported after December —, 1884, are modified as follows:

No old rags shall be landed in the United States, except upon disinfection as provided for in this circular.

Either of the following processes will be considered a satisfactory method of disinfection of old rags, and will entitle them to entry and to be landed in the United States upon the usual permit of the local health officer, viz:

1. Boiling in water for two hours under a pressure of fifty pounds per square inch.

2. Boiling in water for four hours without pressure.

3. Subjection to the action of confined sulphurous acid
520 gas for six hours, burning one and a half or two pounds roll brimstone in each 1,000 cubic feet of space, with the rags well scattered upon racks.

4. Disinfection in the bale by means of perforated screws or tubes through which sulphur dioxide, or superheated steam at a temperature of not less than 350 degrees, shall be forced under a pressure of four atmospheres for a period sufficient to insure thorough disinfection.

Old rags may be landed and stored at such places as may be fixed by this department for the purpose of undergoing any of the processes of disinfection before named, and upon the completion of such process to the satisfaction of an inspector of customs and the local health officer, the rags may be delivered to the importer or consignee.

Old rags may be subjected to disinfection by either of said processes in any other country where this department may appoint an inspector to superintend the same, whose certificate of such disinfection shall be authenticated by a United States consular officer, according to department circular No. 61 of April 22, 1884.

—— ——, *Secretary.*

DEFENDANTS' EXHIBIT 18.

521 Supreme Court, Kings County.

WILLIAM LOCKWOOD and EMERY M. McCLINTOCK
vs.
WILLIAM H. ROBERTSON, as Collector of the Port of New York, and William H. Robertson Individually, and The Paper Stock Disinfecting Company.

The plaintiffs, complaining, allege:

I. Omitted by consent.

II. That they have imported 2,920 bales of rags in the ship "Vigilante," from Japan, of the value of about thirty-two thousand dollars; that by the order of the defendant, William H. Robertson, who is collector of the port of New York, they are being taken by the defendant, The Paper Stock Disinfecting Company, which is a corporation under the laws of the State of New York, for the purpose of putting them through a process of so-called disinfection; that being the business of said corporation, disinfection of that and similar material; that they have the machinery at the Baltic stores, in the city of Brooklyn, where said rags are being landed; that if said rags are put through said process of disinfection, which is threatened by said corporation, they would be damaged very greatly, and, as plaintiffs are informed and believe, to the amount of six thousand dollars, being rendered salable only for a reduced amount of 522 about that sum, as being rags that have been put through that process; that the defendants are about so treating said rags without the consent and against the remonstrance of plaintiff, and without necessity so to do or any right, and have damaged the same to the extent of three thousand dollars.

III. That, as plaintiffs are informed and believe, the defendants are not pecuniarily responsible to the extent of the damages that would be done to said rags by their action, threatened as aforesaid.

IV. That by reason of the matters before se- forth, that plaintiffs have sustained damage to a large amount, and that unless the defendants are enjoined from putting said rags through the process of disinfection, threatened and commenced by defendants, that the plaintiffs will suffer irreparable injury.

Wherefore, plaintiffs demand judgment that the defendants may be enjoined from interfering with said rags, to disinfect the same, and for their damages of three thousand dollars, and for the costs of this action.

Dated Brooklyn, June 13, 1885.

S. V. LOWELL,
Plaintiffs' Attorney.

Verified by Lockwood.

523 Supreme Court, Kings County.

William Lockwood *et al.*
vs.
William H. Robertson *et al.*

City of New York, *ss:*

William Lockwood, being duly sworn, says: That he is one of the plaintiffs herein, comprising the firm of Lockwood & McClintock, doing business in the city of New York. That the said firm are the owners of 2,920 bales of rags, which are now in lighters at or near the Baltic stores, or in said stores. That the same were imported in the ship "Vigila-te" from Japan, and are known as the rags brought by said ship for plaintiffs. That the defendants have taken, and are taking possession of said rags for the purpose of disinfecting the same, without deponent's consent and against his remonstrance. That such disinfection would be a great and irreparable loss to plaintiffs, for these reasons: (1.) That the rags do not require it; that they are not from an infected port, and not liable in any way to give any disease. (2.) That after being so treated they become liable to spontaneous combustion; (3.) and are liable not only to be destroyed thereby, but to spread fire. (4.) That they will not be so salable, as they will acquire a bad reputation in the trade as being rags that have needed disinfection.

524 That the health officer of the port of New York has certified in writing, in the usual form, as to the rags brought by said ships, that they have not been imported from any infected port.

That the health officer of the city of Brooklyn, where such rags are being landed, has been called upon and has satisfied himself and so expressed himself, that there was no fear of contagion from said rags, and that he has given in the usual form in such cases, a certificate allowing the landing in Brooklyn of said rags which could not be landed without said certificate.

That the board of health of the city of New York, have given a like certificate, authorizing the rags from said ship to be landed at the city of New York.

That the defendants have a disinfecting machine at the said stores where said rags are being landed in Brooklyn, and are proceeding to put them through the disinfecting process, with the hope of being able to collect a large bill therefor. The charges made by them being very greatly in excess of the cost of such work, and claim that they will have a lien on said rags for their bill, and will refuse to deliver them until such bill is paid. That the damage to said rags by said disinfection would be very great, and as deponent verily believes would be about $5,000.

That as deponent is informed and believes, the defendants are not pecuniarily responsible to the extent of the damage that would be done to said rags and to the deponent through the disinfection threatened.

That no previous application of any kind in this action has been heretofore made or to any other judge.

WILLIAM LOCKWOOD.

Sworn to before me, this 13th day of June, 1885.

ALEXANDER McKINNEY,
Commissioner of Deeds.

525 Supreme Court, Kings County.

WILLIAM LOCKWOOD *et al.*
vs.
WILLIAM H. ROBERTSON *et al.*

CITY OF NEW YORK, *ss:*

Conrad Braker, Jr., being duly sworn, says: That he is an importer and dealer in rags and chemicals; that he knows the rags imported by the ship "Vigilante" from Japan, now being taken into the Baltic stores in the city of Brooklyn.

That he has read the foregoing affidavit of William Lockwood and is acquainted with the matter therein set forth and referred to, and he says that the allegations and statements in said affidavit are true.

C. BRAKER, JR.

Sworn to before me, this 15th day of June, 1885.

ALEX. McKINNEY,
Com'r of Deeds.

526 DEFENDANTS' EXHIBIT 19.

Supreme Court, Kings County.

WILLIAM LOCKWOOD *et al.*
vs.
THE PAPER STOCK DISINFECTING CO.

COUNTY OF KINGS, *ss:*

Edward B. Bartlett, being duly sworn, says: That the health officer of the port of New York, as deponent is informed and believes, has power to order all imported merchandise to be subject to such measures of purification as said health officer shall judge necessary; and said health officer did order that the rags in question herein should be disinfected.

That, as he is informed and believes, said ship "Vigilante" sailed from Hiogo, Japan, on or about the 19th day of January, 1885. And deponent further says, that it has been demonstrated by repeated experiments that it does not injure rags by subjecting them to this process of disinfection. That on one occasion one of the pl'ffs, viz., William Lockwood, was present at the examination of rags that had been subjected to this process, and stated in deponent's presence and hearing that it in nowise injured said rags.

E. B. BARTLETT.

Sworn to before me, this 17th day of June, 1885.

ROBERT MERCHANT,
Notary Public, Kings County.

527 Supreme Court.

WILLIAM LOCKWOOD *et al.*
vs.
THE NEW YORK PAPER STOCK DISINFECTING COMPANY.

CONRAD BAKER *et al.*
vs.
THE NEW YORK PAPER STOCK DISINFECTING COMPANY.

COUNTY OF KINGS, *ss:*

Samuel Weber Parker, being duly sworn, says: That he has read the original letter of William M. Smith, health officer of the port of New York, and the annexed printed copy is a true copy, to the best of deponent's knowledge and belief; and deponent further says that there are no other means known whereby rags can be disinfected in the bale, except the process owned by the Paper Stock Disinfecting Co., and bonds have to be given to the health officer of the cities of New York & Brooklyn that no bales are to be broken; and that further, to deponent's best knowledge and belief, that after the above-referred-to letter was received, the honorable Secretary of the Treasury and collector of the port of New York ordered the cargo of rags *ex* "Vigilante" to be disinfected at the Baltic stores by superheated steam under the Secretary's previous order of December 22nd, 1884. 528

SAMUEL WEBER PARKER.

Sworn to before me this 17th day of June, 1885.

WILLIAM MILLS,
Notary Public, Kings Co.

(Letter of Dr. Smith annexed hereto is Plaintiffs' Exhibit L.)

DEFENDANTS' EXHIBIT 20. April 20, 1887.

LOCKWOOD
vs.
THE PAPER STOCK DISINFECTING CO.

PRATT, *J.*:

It is clear that if the defendant has no right to disinfect the rags in question, a suit at law can be maintained by the plaintiff for their possession or for the conversion.

The only ground alleged in the complaint to warrant a suit in equity for an injunction is the fact that it is noted that the defendant is irresponsible and cannot respond to a judgment for damages. This statement is explicitly denied, and the plaintiff has therefore a perfect remedy at law for any injury he may sustain in the premises.

I am not unmindful of statements in the complaint that these rags are not shown in the slightest degree to be infected, and that there is no authority or law for their detention by the defendant. Assuming all this to be true, and it presents the 529 ordinary case of a person seizing the property of another without legal right, for which the law affords a speedy and adequate remedy.

It is not necessary, therefore, to decide whether the order of the health officer of the port, or the order of the collector furnish any legal justification for the detention of the property.

It is sufficient to say that in my judgment it is not a case in which an injunction should be issued.

An order may be entered dissolving the temporary injunction with leave to the plaintiff, if so advised, to discontinue the suit.

DEFENDANTS' EXHIBIT 21.

(Fairchild No. 2.)

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *April* 14, 1885.

SIR: I am in receipt of your telegram of even date herewith, calling for report of the facts in regard to rags imported by Lockwood & McClintock, per "Exile," from Leghorn.

I have the honor to report that this office understands the department circular of the 22d of December last, as applying only to rags afloat and bound to the United States on or after the 1st of January, 1885, and that its previous circulars are in force as to rags put on shipboard before that time.

By the Treasury circular of November 15, 1884, "France and Italy and all Mediterranean and French ports are declared to be infected."

The rags in question having been shipped prior to January 1, 1885, and coming from Leghorn, I hold that they are covered 530 by the last named circular, and therefore declined to permit them to land except for disinfection.

The importers, it is proper to state, produced certificates to the effect that the rags were not gathered in unhealthy districts and stated that the importation was made by them in good faith in the understanding on their part that the effect of the circular of December 22, 1884, was to admit without disinfection rags shipped from any country prior to the 1st of January. It is for the department, therefore, to determine whether the rags in question, on the strength of the certificates offered, shall be admitted without being subjected to disinfection.

Very respectfully, W. H. ROBERTSON, *Collector.*

Hon. D. Manning, Secretary of the Treasury.

DEFENDANTS' EXHIBIT 22.

(Exhibit Fairchild No. 7.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 11, 1885.

Collector of customs, New York.

SIR: The department is in receipt of a telegram concerning an importation of rags, per "Battaglia," now lying at your port, which rags the consignees desire to be governed by the circular of the 10th instant, a copy of which was transmitted to you.

The department has no objection to this, with the understanding, however, that you first submit all the facts to the health officer of the port, and receive assurance from him that the permit 531 if any issued in the case is the "permit duly authorizing the landing" of the rags which is required by the circular.

Very respectfully, C. S. FAIRCHILD,
Assistant Secretary.

(No enc.)

DEFENDANTS' EXHIBIT 23. April 20, 1887.

(Exhibit Fairchild No. 8.)

TREASURY DEPARTMENT,
WASHINGTON, D. C., *June 12th,* 1885.

Collector of customs, New York.

SIR: Referring to the circular of the 10th inst. No. 81, by virtue of which the matter of the disinfection of old rags is placed under the exclusive jurisdiction and control of the health officer of the port, you are requested to notify such officer that disinfection of rags when required at your port, must hereafter be done at such places as he may designate. You will also notify the proprietors of the warehouses where such disinfection has been heretofore effected under your supervision, of such change and inform them that the designation of their warehouse for such purpose is revoked.

Very respectfully,
(Signed) C. S. FAIRCHILD,
Assistant Secretary.

"A true copy."
F. H. WIGHT,
Deputy Collector, Warehouse Division.

532 DEFENDANTS' EXHIBIT 24.

(Exhibit Fairchild No. 9.)

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June* 16, 1885.

Hon. Daniel Manning, Secretary of the Treasury.

SIR: Referring to my letter of even date I herewith transmit copy of letter addressed by me to the U. S. attorney for the eastern district of New York requesting him to appear in my behalf in the matter of suit brought against myself in both my official and individual capacity and the injunction obtained thereunder enjoining the disinfection of certain rags *ex* ship "Vigilant," which rags were ordered disinfected pursuant to your instructions of the 5th instant and the advice of the health officer.

Please instruct the U. S. attorney in the premises.

Very respectfully, W. H. ROBERTSON, *Collector.*

DEFENDANTS' EXHIBIT 25.

(Exhibit Fairchild No. 11.)

8567*d.*

WASHINGTON, D. C., *June* 17, 1885.

Coll. of customs, New York.

SIR: The dep't is in receipt of your two letters of the 16th instant in relation to a suit which has been brought against yourself in both your official and individual capacity, in connection with an importation of certain rags into your port per "Vigilant."

533 As requested I return herewith the report of the health officer Smith, dated the 6th instant, having first taken a copy for the use of this office.

The U. S. attorney has been this day instructed to appear and defend you in the suit.

Very respectfully, C. S. FAIRCHILD,
Ass't Sec'y.

One enclosure (Defendants' Exhibit 26 & Fairchild No. 12).

DEFENDANTS' EXHIBIT 26. April 20, 1887.

(Exhibit Fairchild No. 12.)

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June 19th*, 1885.

Hon. Daniel Manning, Secretary of the Treasury.

SIR: On the 18th instant memorandum of the health officer was produced to me, as to the rags on the st'r bark "Battaglia" (called "Cattaglia" in department's letter of the 10th instant), that the rags should be disinfected at Robbins' reef, unless the Brooklyn commissioner of health would allow them to be disinfected at Baltic stores. The commissioner refused to allow unlading in Brooklyn unless the rags were approved by the health officer; I therefore ordered, under Rev. Stat. 2880, the unlading of the rags and their transfer by bonded lighter to Robbins' reef, for disinfection, provided the health officials of New York city would permit such transfer from the "Battaglia" to the bonded lighter.

Very respectfully. W. H. ROBERTSON, *Collector.*

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534 DEFENDANTS' EXHIBIT 27 A. April 20, 1887.

(Exhibit Fairchild No. 17*b*.)

(Copy.)

WASHINGTON, D. C., *December 11th*, 1884.

To the Hon. Hugh McCulloch, Secretary of the Treasury.

SIR: The committee appointed by the conference of State boards of health, to consider the subject of national action relating to health, which committee had the honor of an interview with you this day, and hereby respectfully submits the view of the committee respecting the particular source of danger to health upon which you have expressed a wish to receive the opinion of the committee, namely, from imported rags.

Members of this committee believe that contagious diseases dangerous to the public health occur in the homes of the people in every country, that old rags are collected mainly from among cast-off material from the homes of the people, and that old rags in whatever country collected are not free from danger, and that it would tend to prevent the introduction into this country of more than one contagious disease if all old rags imported into the country should be disinfected before or on entrance at the port of entry.

This committee are of the opinion that disinfection of old rags can be effected by boiling them thoroughly, by exposing them to superheated steam so as to assure a temperature equal to or exceeding two hundred and twelve degrees, by the use of sulphurous acid gas—the rags being fully exposed to the action of such gas in the ratio resulting from the burning of two pounds of sulphur to each one thousand cubic feet of air, or by the use of the latter agent in any other form or manner which shall secure the subjection of the rags to that agent in an effectual manner.

535 This committee further express the opinion that the disinfection of rags should be allowed to be effected in any country where a proper inspection of the process of disinfection can be secured and such disinfection certified to by a representative of the United States.

DEFENDANTS' EXHIBIT 27 B. April 20, 1887.

(Exhibit Fairchild 17*a.*)

(Copy.)

WASHINGTON, D. C., *December* 12, 1884.

To the Hon. Hugh McCulloch, Secretary of the Treasury.

SIR: In behalf of the committee on Federal legislation of the conference of State boards of health we beg leave to submit the following conclusions in relation to the circular of the Treasury Department referred to us by yourself Thursday afternoon.

Very respectfully yours, H. P. WALCOTT, *Chairman.*
S. S. HERRICK, *Secretary.*

DEFENDANTS' EXHIBIT 28.

(Exhibit Fairchild No. 21. Also Plaintiffs' Exhibit X omitted here by consent.)

DEFENDANTS' EXHIBIT 29.

(Exhibit Fairchild No. 23*c.*)

At a conference held at the Fifth Avenue hotel, April 23d, 1885, for the purpose of considering certain questions relating to the quarantine, there were present Dr. William M. Smith, health officer of the port of New York; Dr. Stuart, of Baltimore; Dr. Lindsley, of New Haven; Dr. J. H. Raymond, of Brooklyn; Dr. A. L. Carroll, secretary of the State board of health, of New York. 536

After careful deliberation, the following conclusions were unanimously adopted:

1st. The maximum period of incubation of Asiatic cholera may, for quarantine purposes, be assumed to be eight days, and that in case of the disease occurring on vessels during the voyage hitherward, the quarantine of observation of persons should extend to eight days from the last date of possible exposure.

2nd. That for fumigation of closed spaces sulphurous acid gas may be commended, three pounds of sulphur being burned for each one thousand cubic feet.

3rd. That for disinfection of luggage or other fomites, reliance may be placed on fresh chloride of lime, bichloride of mercury, or dry heat to 230 degrees Fahrenheit, this temperature to be maintained for three hours, or boiling.

4th. That in view of the danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at place of departure or on their arrival here.

5th. That if such disinfection be done abroad, it is required that either the rags be boiled for not less than thirty minutes, and dried before baling, or treated with superheated steam for not less than eight minutes, and in such manner as to be heated to or above 230 degrees Fahrenheit in every part.

6th. That inspectors should be appointed (by the department having control of the epidemic fund) to certify to the sufficiency of disinfection of rags according to the above rules only, and that a consular endorsement be added to such certificate when disinfection is effected at the place of departure.

537 7th. That in the absence of such certificate and consular endorsement, all rags should be disinfected at port of entry.

WM. M. SMITH, *Health Officer, Port N. Y.*
J. H. RAYMOND, M. D.,
Health Commissioner, Brooklyn, N. Y.
JAMES A. STUART, M. D.,
Com. of Health, Balti. City.
C. A. LINDSLEY, M. D.,
Health Officer of New Haven &
Secretary State Board of Health.
E. M. HUNT,
Secretary of State Board of Health, N. J.
ALFRED LUDLOW CARROLL, M. D.,
Secretary N. Y. State Board of Health.

DEFENDANTS' EXHIBIT 30. April 22, 1887.

(Copy.)

This agreement, made this 18th day of February, 1885, by and between the Paper Stock Disinfecting Co., a corporation duly incorporated under the laws of the State of New York, party of the first part, and Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie, composing the firm of E. B. Bartlett & Co., parties of the second part. Witnesseth as follows:

First. The said party of the first part hereby agrees that for a period of one year from the date hereof all the disinfecting of rags in the port of New York under any process owned or controlled, or hereafter to be owned or controlled, by the party of the first part, their successors or assigns, shall be done at the stores leased or controlled by the said parties of the second part unless compelled to remove to other warehouses by the health or Government authorities.

538 Second. The said parties of the second part hereby agree during said period to furnish all store, dock and pier room necessary for such purpose, and also all the manual labor needed for the receiving, disinfecting and delivering of such rags. Also a

fireman to be appointed by the superintendent of the party of the first part.

Third. That the said party of the first part hereby agrees to pay to said parties of the second part for such room and labor the sum of $1.50 for each ton of 2,000 pounds of rags disinfected in said port of New York during said period at the warehouses of the said party of the second part.

Fourth. The said parties of the second part agree to keep just and proper accounts of all rags disinfected in said port of New York during said period, which accounts are to be rendered daily to the party of the first part and adjusted on the first day of each month, and any amount due thereon paid to the parties of the second part on or before the 15th day of said months, and said books and accounts shall be open at all times to the inspection of the officers of the party of the first part during business hours.

In witness whereof, the party of the first part has caused its corporate seal to be affixed hereto, and these presents to be signed by its president and secretary, and the parties of the second part have affixed their seals the day and year first above written.

O. L. GARDNER,
Pres't The Paper Stock Dis. Co.
[SEAL.] WM. H. SHELP,
Sec'y The Paper Stock Dis. Co.
E. B. BARTLETT.
A. C. WOODRUFF.
HENRY E. NITCHIE.

Witness:
GEO. H. SIMPSON.

539 DEFENDANTS' EXHIBIT 31. April 22, 1887.

F. H. W. J. T.

CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *July 18th*, 1885.

SIRS: In the matter of the imported old rags *ex* "Vigilante," sent to Baltic stores for disinfection, and subsequently stored in your bonded warehouse as unclaimed, I am informed by the owner of the bonded lighters that transferred the rags from vessel to warehouse that you decline to receive his bill for lighterage or to assume the expense of such transfer.

It is the practice at this port for the proprietors of the general-order warehouse to assume such expenses and place the same against the goods. See sect. 2965, Rev'd Statutes, which requires payment for all charges for labor and storage and other expenses accruing upon such merchandise. Will you please inform me of the grounds for your objections to assume the expense of lighterage in this case as against the goods.

I am, very respectfully, E. S. HEDDEN, *Collector.*

Messrs. E. B. Bartlett & Co., No. 17 Old slip, N. Y.

540 DEFENDANTS' EXHIBIT 32. April 22d, 1878.

P. O. box 3292.
Telephone call, "John 222."

NEW YORK, *June 18th*, 1885.

General order (special).

M——.

To New York Disinfecting Company, Dr., Temple court, 5 & 7 Beekman street, rooms 12 & 13.

Cash.
Ex ship "Vigilante" 2,920 b's old rags.

	Marks.	Bales.	Weight.	
Disinfection..	....	2,920	1,168,000 lbs., $5 per ton..	$2,920 00

Storage and insurance expires noon June 23, '85.

DEFENDANTS' EXHIBIT 33. April 22, 1887.

P. O. box 3292.
Telephone call, "John 222."

NEW YORK, *June 27th*, 1885.

General order, rags (special).

M——.

To New York Disinfecting Company, Dr., Temple court, 5 & 7 Beekman street, rooms 12 and 13.

Cash.
Ex b'k Battaglia.

	Marks.	Bales.	Weight.	
Disinfection......	....	150	105,000, $5 per ton..	$262 50

Storage and insurance expire at noon.

(Exhibit 34 is omitted by consent, and there are two Exhibits 35.)

541 DEFENDANTS' EXHIBIT 35. April 22, 1887.

JOHN HOPKINS UNIVERSITY,
BALTIMORE, *Feb.* 9, '87.

DEAR DR. SMITH: In reply to yours of Feb. 8, I would say that my own recent experiments, and those of other investigators previously recorded, show that a temperature of 65° C. = 149° Fahr. is fatal to all known pathogenic organisms, in the absence of spores. I have given 65° C.—say 150 Fahr.—as an outside and safe figure, the time of exposure being ten minutes. As a matter of fact a lower temperature is fatal to these organisms. The anthrax bacillus is killed in five minutes by a temperature of 55° C. = 131° Fahr.

The bacillus of typhoid fever by 56° C. = 132.8° Fahr. in ten minutes. The spirillum of Asiatic cholera ("commabacillus" of Koch) by 52° C. = 125.6° Fahr. in five minutes. All pathogenic micro-cocci (and non-pathogenic as well) upon which I have experimented, are killed by a temperature of 62° C. = 143.6° Fahr.

Pathogenic bacilli which form spores are killed by exposure to a temperature of 100° C.= 212° Fahr. maintained for ten minutes.

Very truly yours, GEO. M. STERNBERG,
Surgeon, U. S. A.

Dr. Wm. M. Smith, health officer, New York.

DEFENDANTS' EXHIBIT 35. April 22, 1887.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *Jan'y 14th*, 1885.

Order.

542 On the entry of old rags shipped on and after the 1st instant and which have not been disinfected prior to importation the permit to land will have written on the face thereof directions to the inspector to send the rags to the Baltic stores in Brooklyn by bonded lighters for disinfection.

Where the rags have been disinfected abroad that fact will be stated on the permit to land, and when entry has not been made an order will be issued by the 4th division in due course to send the rags to such store by the same means and for the same purpose.

The storekeeper in charge of the designated store will make accurate daily returns of the rags received and delivered, distinguishing in his returns of rags received those landed under regular permit by the word, "permitted," and those landed under special orders as unclaimed by the word "unclaimed."

On receipt of certificate from the inspector of rags, Mr. Charles F. Kane, and the local health officer that the rags have been satisfactorily disinfected an order for their delivery will, when proper entry of the rags has been made, be issued by 3rd division.

(Signed) W. H. ROBERTSON, *Collector.*

DEFENDANTS' EXHIBIT 36. April 25, 1887.

R. W. J. T.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June* 13, 1885.

Wm. M. Smith, M. D., health officer.

SIR: The Italian bark "Battaglia" from Leghorn was entered here on the 6th instant, and on the 9th a general order was made omitting rags, of which there were two lots on board.

543 I transmit herewith a copy of a letter from the Treasury Department on the subject of the rags, and inquire whether you will designate the place and process appropriate. See circular of 10th instant, also enclosed.

Very respectfully, W. H. ROBERTSON, *Collector.*

(Enclosed in Defendants' Exhibit 36.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 11, 1885.

Collector of customs, New York.

SIR: The department is in receipt of a telegram concerning an importation of rags per "Battaglia" now lying at your port, which rags, the consigners desire to be governed by the circular of the 10th instant, a copy of which was transmitted to you.

The department has no objection to this, with the understanding, however, that you first submit all the facts to the health officer of the port, and receive assurance from him that the permit, if any, issued in the case is the "permit duly authorizing the landing" of the rags, which is required by the circular.

Very respectfully, C. S. FAIRCHILD,
Assistant Secretary.

(No incl.)

DEFENDANTS' EXHIBIT 37. April 25, 1887.

F. H. W. J. T.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June 13th*, 1885.

544 SIR: Referring to the circular of the 10th inst. from the Treasury Department, a copy of which has been mailed to your address, I transmit herewith for your further information a copy of a letter dated the 12th inst., from the Secretary of the Treasury, revoking the designation of certain warehouses for the disinfecting of imported old rags.

I am, very respectfully,
W. H. ROBERTSON, *Collector.*

Dr. Wm. M. Smith, health officer, port of New York, No. 71 Broadway, N. Y.

DEFENDANTS' EXHIBIT 38. April 25, 1887.

(Exhibit Fairchild No. 4.)

8567*d*.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *June* 6, 1885.

Dr. Wm. M. Smith, health officer, quarantine, Staten island, New York.

SIR: I am in receipt of your favor of the 29th ultimo, transmitting a memorandum copy of "conclusions of conference of quarantine and health representatives, held at the Fifth Avenue hotel, April 23, 1885."

To enable the department to take official action in connection with the matters treated of in such memorandum, it is desirable that it should have an official copy of the conclusions or resolutions of the said conference, duly signed by the health officers of the different boards of health participating therein.

545 I will therefore thank you, at your early convenience, to forward such official copy, duly signed as aforesaid, and specifying the different ports covered by such conclusions.

Very respectfully, D. MANNING, *Secretary*.
F.

(No enclosure.)

Defendants' Exhibit 39. April 25, 1887.

9 misc. 80. Health officer's department, State of New York.

Quarantine, S. I., *M'ch 13th*, 1885.

The collector of the port New York.

Dear Sir: I beg leave to represent in reference to the communication to your department from the Treasury Department in relation to infection of rags from infected ports on lighters, a copy of which is hereby acknowledged the following was addressed to the Secr*a*tary of the Treasury under date of the 12 inst.:

"Quarantine, S. I., *March 12th*, 1885.

The honorable Secretary of the Treasury, Washington, D. C.

Sir: I am in receipt of a copy of a letter from the Treasury Department to the collector of the port of New York expressing its approval of the proposal to disinfect rags from infected ports on 'a covered lighter at quarantine under the superintendence of the health officer' * * * subject to the approval of the proper health officer.

The undersigned would respectfully represent that such an arrangement would, in his opinion, fully meet the necessities for the protection of the public health."

Very respectfully, WM. M. SMITH,
Health Officer, Port of New York.

546 Defendants' Exhibit 40.

(Fairchild No. 25.)

Treasury Department,
Office of the Secretary,
Washington, D. C., *June* 11, 1885.

Collector of customs, New York.

Sir: The department is in receipt of a telegram concerning an importation of rags per "Cattaglia," now lying at your port, which rags the consignees desire to be governed by the circular of the 10th instant, a copy of which was transmitted to you.

The department has no objection to this with the understanding however, that you first submit all the facts to the health officer of the port, and receive assurance from him that the permit if any, issued in the case is the permit duly authorizing "the landing of the rags," which is required by the circular.

Very respectfully, C. S. FAIRCHILD,
Assistant Secretary.

(No encl.)

DEFENDANTS' EXHIBIT 41. April 25, 1887.

The Paper Stock Disinfecting Co., New York office, 5 & 7 Beekman St.

Blank 3, No. 77.

NEW JERSEY LIGHTERAGE CO., No.
office
97 Water street. 186$\frac{5}{66}$.

Pkgs. Marked.

By Lighter *Success.*

BROOKLYN, *June 13th*, 1885.

We certify that ship "Vigilant" has landed, order and condition unknown, at Baltic stores, for account of whom it may concern under general order 852, eight hundred and fifty-two bales of rags.

THE PAPER STOCK DISINFECTING CO.,
Per M. L. PERRY.

Account of....................

"Not negotiable" written across face in red ink.

Exhibits 42–47 are similar to 41, and are omitted by consent.

547 DEFENDANTS' EXHIBIT 48. April 26, 1887.

PORT OF NEW YORK, *June* 13, 1885.

I do hereby certify that 329 bales of old rags imported by general order per ship "Vigilant" and marked C. B. R. (o) C. R. (29) deposited in the Baltic stores on the 13 day of June, 1885, have been disinfected by "The Paper Stock Disinfecting Company," in the manner required by process number four, as prescribed by Treasury circular of December 22d, 1884.

C. F. KANE,
U. S. Inspector of Rags.

Defendants' Exhibits 49–56 are similar to 48 under dates June 15th, 16th, 20th, 17th, 18th, 19th, 22d, and 23rd. Omitted by consent.

DEFENDANTS' EXHIBIT 57. April 25, 1887.

Lockwood & McClintock, 276 Pearl street, New York.

FEBRUARY 2ND, 1885.

S. Webber Parker, Esq., New York city.

DEAR SIR: Will you be prepared in March to disinfect rags, landing in Philadelphia and Baltimore? If so, we will probably order some shipments made that will arrive there during that and following months of this year.

Very truly yours, LOCKWOOD & McCLINTOCK.

548 DEFENDANTS' EXHIBIT 58. April 25, 1887.

Memorandum.

From the Paper Stock Disinfecting Co., Temple court, 5 & 7 Beekman St. (rooms 12 & 13). Telephone, John 222. P. O. 3292.

NEW YORK, *July* 27, 1885.

To Messrs. E. B. Bartlett & Co., N. Y.:

We enclose bills for our charge on 2,920 b's "Vigilante" and 150 b's *ex* "Battaglia," as per your request. The lighterage on these goods we presume is covered by liens of lighterage Co.

Yours truly, THE PAPER STOCK DISINFECTING COMPANY.
W. H. SHELP.

DEFENDANTS' EXHIBIT 59. April 25, 1887.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June* 1, 1885.

The Paper Stock Disinfecting Co.:

You are hereby notified that there appears on the manifest of the Am. ship "Vigilant," which entered this day from Hiogo and Yokohama, rags described below.

Respectfully, W. H. ROBERTSON, *Collector.*

549 Marks & No.	Quantity.	Shippers.	Consignees.
C B R	300 bales	Fabor & Wright Meyer & Co.	D. Taylor's Sons. Winter & Smillie. Brown Bros.
C R	130 "		
F V H	1,000 "		
J H S	1,200 "		
Meyer & Co.	1,000 "		
			Order.
F P C	500 "	Wm. Bohlens	Do.
B B	519 "	Fabor & Wright	Winter & Smillie.
B	72 "	Meyer & Co.	Order.
Meyer & Co.	500 "		
"	500 "		
Superior Japan rags	5,721		

Defendants' Exhibit 60 is similar. Omitted by consent.

DEFENDANTS' EXHIBIT 51 (61). April 25, 1887.

Circular.

Importation of old rags.

1884. Department No. 168, division of customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *November* 15, 1884.

To officers of customs and others:

The unlading in the United States of old rags shipped from and after the 20th instant from foreign ports, or countries now or hereafter known to be infected with contagious or epidemic diseases, is hereby prohibited.

France and Italy and all Mediterranean and French ports are declared to be infected within the meaning of this order.

Old rags, gathered or baled in infected ports or countries and shipped from other ports or countries, are also prohibited 550 from being unladen. No old rags shall be landed at any port of the United States except on a certificate of the United States consular officer at the port of departure that such rags were not gathered or baled at, or shipped from, any infected place, or any region contiguous thereto.

This circular supersedes No. 145, of August 30, 1884, and No. 162, of October 23, 1884, on the same general subject, as to shipments made after the date specified, and will remain in force until further notice.

This order will not be construed to allow the unlading of any old rags except upon the usual permit of the local quarantine or health officers.

H. McCULLOCH, *Secretary.*

EXHIBIT FAIRCHILD 1.

ACTING SECRETARY, *April* 14, 1885.

Collector of customs, New York:

Report by mail today facts in regard to rags of Lockwood & McClintock, imported per "Exile."

C. S. FAIRCHILD,
Acting Secretary.

Charge Treas'y. C. C.

(Exhibit Fairchild No. 2 is Defendants' Exhibit No. 21.)

551 EXHIBIT FAIRCHILD 3.

Telegram.

U. S. TREASURY DEPARTMENT, *April* 15, 1885.

Collector of customs, New York:

Rags of Lockwood & McClintock per "Exile" may be landed, with approval of proper health officer, without requiring disinfection.

C. S. FAIRCHILD, *Ass't Sec'y.*

Charge Treas'y. C. C.

(See objection, folio 302.)

Exhibit Fairchild No. 4 is Defendants' Exhibit No. 38.

EXHIBIT FAIRCHILD 5.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *June* 8, 1885.

SIR: I have to acknowledge the receipt of your telegrams of the 5th and 6th instant relative to the landing of the rags per "Vigilant" and per "Weissenhorn;" and to report that having addressed to him a letter, of which I transmit herewith a copy, I received from the health officer of the port the communication also herewith forwarded.

Governed by his conclusions I shall, as directed by you, order the rags when landed to be disinfected.

Very respectfully, W. H. ROBERTSON, *Collector.*

Hon. D. Manning, Secretary of the Treasury.

552 EXHIBIT FAIRCHILD No. 6.

Circular.

Importation of old rags.

1885. Department No. 81, division of customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,

WASHINGTON, D. C., *June* 10, 1885.

To collectors of customs and others:

Whereas it has been conclusively shown to the department that, under existing laws, no general regulation can be legally framed whereby the disinfection of old rags can be accomplished in foreign ports to the satisfaction of the several health authorities. Therefore, it is ordered—

I. That all circulars of this department concerning the disinfection of imported old rags are hereby revoked; and that all old rags hereafter imported from foreign countries shall only be admitted to entry at the custom-house upon the production of permits from the health officers at the ports of importation, duly authorizing the landing of the same.

II. Vessels carrying old rags, arriving at any United States quarantine, will be detained by the quarantine officers and held subject to the order of the proper health authorities at the port of destination.

DANIEL MANNING, *Secretary.*

(Exhibit Fairchild No. 7 is Defendants' Exhibit 22.)
(Exhibit Fairchild No. 8 is Defendants' Exhibit 23.)
(Exhibit Fairchild No. 9 is Defendants' Exhibit 24.)

553

EXHIBIT FAIRCHILD NO. 10.

CUSTOM-HOUSE, COLLECTOR'S OFFICE, *June* 16, 1885.

LOCKWOOD *et al.*
vs.
ROBERTSON & *al.*
No. 9836.

Hon. U. S. attorney, eastern district of New York.

SIR: I have been served with the enclosed summons and complaint and order enjoining me in both my official and individual capacity from disinfecting certain rags imported as alleged by Lockwood & McClintock per ship "Vigilant" which entered on the 1st instant.

My action in this matter was based upon the direction of the Secretary of the Treasury and the advice of the health officer, by whose advice the Secretary instructed me to be governed in this particular case. I enclose copy of dep't telegram of June 5, 1885, and copy of my letter to the health officer. The reply of the health officer has been sent to the department, but its return has been requested and it will be forwarded to you immediately upon its receipt.

I have to request that you will appear on my behalf in the matter and take such other steps as in your judgment may be proper in the premises.

Very respectfully, —— ——, *Collector.*

This was an enclosure and was received unsigned.

(Exhibit Fairchild No. 11 is Def'ts' Exhibit No. 25.)
(Exhibit Fairchild No. 12 is Def'ts' Exhibit No. 26.)

554

EXHIBIT FAIRCHILD NO. 13.

NEW YORK, *June* 24, 1885.

To the honorable the Secretary of the Treasury.

SIR: A considerable number of bales of rags arrive at the various ports of the United States annually, with certificates stating that they have been disinfected at the ports of the departure in foreign countries. So far as is known there has never been any official examination made of methods of disinfection practiced abroad and the efficiency of the same. As we believe that all old rags should be disinfected, and as the regulations governing disinfection at our own ports are very strict, it is of great importance that only those rags should be permitted to land in this country without disinfection here, which have been subjected to equally efficacious methods abroad.

In view of these facts, it is requested that the honorable, the Secretary of War, be urged to direct Dr. George M. Sternberg, U. S. A., now attending the international sanitary conference at Rome, to inquire fully into the methods of rag disinfection practiced abroad.

Respectfully,
WM. M. SMITH,
Health Officer, Port of N. Y.
J. H. RAYMOND, M. D.,
Health Commissioner, Brooklyn, N Y.
ALEXANDER SHALER,
Pres't Board of Health, City of New York.

555 EXHIBIT FAIRCHILD 14.

Health officers' department, State of New York.

QUARANTINE, S. I., *June 26th*, 1885.

To the honorable Secretary of the Treasury.

SIR: The following suggestions are made, and exceptions taken to the conclusions of the conference by the parties to it. To wit:

1st. Dr. E. M. Hunt excepts to the "assumption" that the incubative period is limited to eight days.

Dr. Steuart suggests that the "satisfactory evidence in writing to be satisfactory requires the official indorsement of the United States consul."

Dr. Alfred Carroll suggests striking out the words "having control of the epidemic fund" and inserting "Treasury" between the & depart*ure*.

Dr. Durgin, pres't of Boston board of health, approves with the following addition: That in the absence of such certificate and consular indorsement, all rags should be disinfected at the port of entry, "except when accompanied by satisfactory evidence in writing that they have not been collected or baled in any district or place contiguous thereto, in which cholera, yellow fever, small-pox, typhus fever, scarlet fever, dip-theria, or the plague has prevailed, during any part of the twelve months last preceding said collection.

Respectfully,
WM. M. SMITH,
Health Officer, Port of New York.

556 EXHIBIT FAIRCHILD 15.

8567*d*.

WASHINGTON, D. C., *June* 30, 1885.

Dr. Wm. M. Smith, Dr. J. H. Raymond, and General Alexander Shaler, New York.

GENTLEMEN: The dep't is in receipt of your joint letter of the 24th instant, in which you ask me to request the Hon. Secretary of War to direct Dr. George M. Sternberg, U. S. A., now attending the international sanitary conference at Rome to inquire fully into the method of rag disinfection practiced abroad. With regard to this matter I would state that, as all questions relating to the disinfection of rags imported into the United States, are now under the jurisdiction of the health officers at the different ports, I prefer that you should communicate your wishes in the matter directly to the Secretary of War.

Very respectfully, D. MANNING, *Secretary*.

(No enc.)

EXHIBIT FAIRCHILD 16.

Circular.

Importation of old rags.

1886. Department No. 94, Division of customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *July* 26, 1886.

To collectors of customs and others:

Department's circular of June 10, 1885 (synopsis 6960), is
557 hereby amended by striking out therefrom paragraph "I" and inserting in lieu thereof the following:

All old rags imported into the United States in vessels which have passed local quarantine at the port of importation will be admitted to entry in the same manner as other imported commodities—that is to say, without requiring special permits from the health officers as to their landing. The fact that the vessel has passed quarantine will be considered as sufficient evidence that her entire cargo is free from infection.

C. S. FAIRCHILD,
Acting Secretary.

(Exhibit Fairchild No. 17 A is Def'ts' Ex. No. 27 B, and Exhibit Fairchild No. 17 B is Def'ts' Ex. No. 27 A.)

EXHIBIT FAIRCHILD 18.

Circular.

Importation of old rags.

1884. Department No. 178, division of customs.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *December* 22, 1884.

To collectors of customs and others:

All circulars of the department concerning the importation of old rags are modified as follows:

No old rags except those afloat on or before January 1, 1885, on vessels bound directly to the United States, shall be landed in the United States from any vessel, nor come into the United States by land, from any foreign country, except upon disinfection, at the expense of the importers, as provided in this circular, or as may hereafter be provided.

558 Either of the following processes will be considered a satisfactory method of disinfection of old rags, and will entitle them to entry and to be landed in the United States upon the usual permit of the local health officer, viz:

1. Boiling in water for two hours under a pressure of fifty pounds per square inch.
2. Boiling in water for four hours without pressure.
3. Subjection to the action of confined sulphurous acid gas for six hours, burning one and a half or two pounds roll brimstone in each 1,000 cubic feet of space, with the rags well scattered upon racks.
4. Disinfection in the bale by means of perforated screws or tubes, through which sulphur dioxide, or superheated steam at a temperature of not less than 330 degrees, shall be forced under a pressure of four atmospheres for a period sufficient to insure thorough disinfection.

Old rags may be landed and stored at such places as may be approved by this department for the purpose of undergoing any of the processes of disinfection before named, and upon the completion of such process to the satisfaction of an inspector of customs and the local health officer, the rags may be delivered to the importer or consignee.

Old rags may be subjected to disinfection by either of said processes in any other country where this department may appoint an inspector to superintend the same, whose certificate of such disinfection shall be authenticated by a United States consular officer, according to department circular No. 61, of April 22, 1884.

H. McCULLOCH, *Secretary*.

559 EXHIBIT FAIRCHILD 19 A.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January* 12, 1885.

Collector of customs, New York.

SIR: Referring to previous correspondence in the matter of the designation of warehouses for the storage and disinfection of imported rags, I enclose herewith for your examination and report, a communication for Messrs. Nesmuth & Sons, dated New York, the 31st ultimo, in which they make application for the designation of their Empire store, in Brooklyn, for the purpose mentioned. Return of the enclosure is requested.

Very respectfully H. F. FRENCH,
Assistant Secretary.

(1 enclosure.)

EXHIBIT FAIRCHILD 19 B.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *January* 12, 1885.

Collector of customs, New York.

SIR: Under date of the 15th ultimo, Mr. E. B. Bartlett, addressed a letter to this department touching the selection of a warehouse for the storage of imported old rags, for the purpose of having them disinfected in the manner proposed by the circular of the 22d ultimo.

The matter was referred to Dr. W. M. Smith, health officer for New York, and to Dr. J. H. Raymond, health commissioner for Brooklyn, and both of these gentlemen agree as to the propriety of the landing and storing of rags at the Baltic stores, 560 situated between and at the foot of Baltic and Harrison streets, Brooklyn, as being the most conveniently located, as affording abundance of room for the purposes of disinfection and for storage. This proposition applies, of course, only to rags that may pass up to your port by consent of the health authorities.

I approve of the selection of this place for the purpose named.

Where rags requiring disinfection form part of a cargo, they will be placed on lighters as fast as discharged, and the lighter loads will be taken to the place above designated. If the whole cargo of a vessel is rags, she should be required to unload her cargo at that place.

I do not think it wise to enter upon a discussion of the various questions you have raised in your letter of the 9th instant upon the subject of discharging rags. It will be certainly time enough to meet such objections when they are raised by importers, who, if they have any grievances, are not slow to make complaints in regard thereto.

As to your suggestion that the course prescribed by department's circular of the 22d ultimo may lead to suits against you for damage, I have to say that section 989 of the Revised Statutes would seem to protect you from any pecuniary loss where the action complained of is taken by direction of this department.

When an entry is presented of rags which have not been disinfected, it should be accepted, but the permit to land should be coupled with the condition that the rags are to be taken to the proper storehouse for disinfection, and shall only be delivered therefrom upon a further permit to be issued by you, in the nature of a delivery from warehouse, and upon the certificate of the inspector in charge of the store, that the requirements of the circular have been complied with.

561 Should other places be hereafter selected for the storage and disinfection of old rags, you will, of course, be advised in regard thereto.

Very respectfully, H. McCULLOCH, *Secretary*.

(No enclosures.)

(Exhibit Fairchild No. 20 is Def't's Ex. 7.)
(Exhibit Fairchild No. 21 is Def't's Ex. 28.)

EXHIBIT FAIRCHILD 22.

MAY 4TH, 1885.

Dr. Wm. M. Smith, health officer, New York city.

SIR: It is stated in the public prints that a conference of the health officers of New York, Brooklyn, Philadelphia, Baltimore, New Haven and Boston was recently held at the 5th Avenue hotel, in New York, to discuss quarantine matters generally, and at which conference it was agreed to establish a close quarantine against the importation of old rags, and allow none to be landed except after being thoroughly boiled or steamed by the superheated steam process; and the paragraph further states that the sulphur process was declared to be a failure, and the conference decided against it. Please inform this department whether such be a fact, and, if so, the requirements which are deemed necessary under the rule adopted by the conference to admit old rags so imported.

The sulphur process to which allusion is made is one of the processes recognized in the circular of this department of Dec. 22, last.

Very respectfully, C. S. FAIRCHILD,
Ass't Sec'y.

(No enc.)

562 EXHIBIT FAIRCHILD 23 A.

HEALTH OFFICER'S DEPARTMENT,
STATE OF NEW YORK,
QUARANTINE, S. I., *May 29th*, 1885.

Secretary of the Treasury, Washington, D. C.

SIR: I beg leave to acknowledge the receipt of the communication from Secretary Fairchild requesting to be informed of the action of the conference of quarantine and health representatives at the Fifth Avenue hotel, held April 23rd, 1885.

I enclose the conclusions of the meeting referred to as recorded by the acting secretary, Dr. Alfred L. Carroll, secretary of the State board of health.

The enclosure has been withheld until the conclusion of the health authorities at Boston was obtained.

Very respectfully,
WM. M. SMITH,
Health Officer, Port of New York.

EXHIBIT FAIRCHILD 23 B.

Copy of Conclusions of Conference of Quarantinists and Health Representatives Held at Fifth Avenue Hotel April 23d, 1885, as Recorded by Secretary A. L. Carroll.

I. That the maximum period of incubation of Asiatic cholera may, for quarantine purposes, be assumed to be eight days; and that in case of the disease occurring on vessels during the voyage hitherward, the quarantine of observation of persons should extend to eight days from the last date of possible exposure.

563 II. That for fumigation of closed spaces sulphurous acid gas may be commended; from two to three pounds of sulphur being burned for each 1,000 cubic feet.

III. That for the disinfection of luggage or other fomites, reliance may be placed on fresh chloride of lime, bichloride of mercury, or dry heat 230 degrees Fahr.

IV. That in view of the danger of other contagia as well as that of cholera, all rags imported to this country should be disinfected either at the place of departure or on their arrival here.

V. That if such disinfection be done abroad, it be required that either the rags be boiled for not less than thirty minutes and dried before baling, or treated with superheated steam for not less than eight minutes, and in such manner as to be heated to or above 212 degrees Fahr. in every part.

VI. That inspectors should be appointed (by the department having control of the epidemic fund) to certify to the sufficiency of disinfection of rags according to the above rules, and that a consular endorsement be added to such certificate.

VII. That in the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry.

At the suggestion of Dr. Durgin, president of the Boston board of health, the following amendment to the seventh conclusion is accepted by the conference.

VIII. That in the absence of such certificate and consular endorsement, all rags should be disinfected at the port of entry, "except when accompanied by satisfactory evidence in writing that they have not been collected or baled in any district or place contiguous thereto in which cholera, yellow fever, small-pox, typhus fever, scarlet fever, dip-theria or the plague has prevailed during 564 any part of the twelve months last preceding said collection."

(Exhibit Fairchild 23 C is Defendants' Exhibit 29.)
(Exhibit Fairchild 24 is Plaintiffs' Exhibit 8.)
(Exhibit Fairchild 25 is Defendants' Exhibit 40.)

The following is a copy of the judgment-roll:

N. Y. Supreme Court.

Trial to be had in the city and county of New York.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Plaintiffs,
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, HENRY E. NITCHIE, and WILLIAM M. SMITH, Defendants.
} Summons.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgement will be taken against you by default, for the relief demanded in *in* the complaint.

Dated New York, 15th May, 1886.

KELLY & MACREA,
Plaintiffs' Attorneys.

Office and post-office address, 237 Broadway, New York.

565 N. Y. Supreme Court.

Trial to be had in the city and county of New York.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK
vs.
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, HENRY E. NITCHIE, and WILLIAM M. SMITH.

The Complaint of Plaintiffs, by Kelly & Macrea, Their Attorneys.

I. That plaintiffs are now and were at all the times hereinafter mentioned partners in business in the city of New York under the firm name of "Lockwood & McClintock."

II. That on or about 30th May, 1885, plaintiffs imported and received from Japan on the ship Vigilant a large quantity of rags to wit: 2,920 bales; also on the bark Battaglia from Leghorn, Italy, certain other rags, to wit: 150 bales, and that said rags arrived in said vessels at the port of New York, on or about said date, and that plaintiffs were then and at all times *times* justly entitled to the possession and control of said rags, and would have had the same except for the wrongful acts and conduct of the defendants as hereinafter stated.

III. That the defendants Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie were at the times herein mentioned, 566 partners in business under the firm name of "E. B. Bartlett & Co." as warehousemen, and were also interested and engaged in the alleged business of disinfecting rags.

IV. That the defendant William M. Smith was at the same time and for several years previously the health officer of the port of New York, and as such officer had charge and control over vessels and the cargo or other property contained therein coming into said port from foreign ports.

V. That said Smith with intent to wrong and injure plaintiffs, wrongfully and unlawfully conspired and combined with said Bartlett & Co. to have said rags of plaintiffs' on said vessels condemned as unclean and infectious property, and to require said rags to be disinfected under the process used by said Bartlett & Co., so that said Bartlett & Co. would be able and entitled to charge plaintiffs therefore and to hold and keep said rags until such charges were paid.

VI. That in furtherence of said wrongful conspiracy and combination, said Smith under color of his said office, but wrongfully and unlawfully, caused said rags of plaintiffs on and between 5th June, 1885, and 17th June, 1885, to be taken from said vessels and transferred to the place of business of said Bartlett & Co., for the pretended purpose of having the same disinfected, although said Smith and the said Bartlett & Co., well knew that said rags were clean and free from any infectious matter, and were not at all dangerous to health, and did not require to be disinfected.

VII. That by reason of said wrongful conspiracy and acts of defendants as aforesaid, said rags were wrongfully taken or caused to be taken by said Bartlett & Co., and kept and held by them 567 from on or about the 5th day of June, 1885, until on or about the 1st day of October, 1885, and during said time said rags were partially subjected to a pretended process of disinfection which was ineffectual and worthless for any real purpose of disinfection, and which greatly damaged and injured the rags, but which process was fraudulently and collusively approved of by said Smith, with intent to give said Bartlett & Co., the control and monopoly of the disinfection or pretended disinfection of rags, so that they might be able to charge and extort from plaintiffs and others, large sums of money for such so-called disinfection.

VIII. That plaintiffs protested against the said wrongful taking of said rags and the conduct of defendants in and about the same, and demanded the possession of their said rags, but said defendants refused to deliver the same or to permit them to have the same until the charges for said transfer, and said so-called and pretended disinfection were paid, and that by reason of said wronful acts as aforesaid, by said Smith, conspiring and colluding with said Bartlett & Co., the plaintiffs were put to and suffered damages in the sum of fifteen thousand dollars.

Wherefore plaintiffs demand judgment against defendants for said sum, with interest and costs.

KELLY & MACRAE,
Attorneys for Plaintiffs.

Office and P. O. address, 237 Broadway, New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Emory W. McClintock, being duly sworn, says: That he is one of the plaintiffs herein, and that the foregoing complaint is true of his own knowledge, except as to the matters therein stated
568 to be alleged on information and belief, and as to those matters he believes it to be true.

E. W. McCLINTOCK.

Sworn to before me, the 18th day of May, 1886.

EDW. C. CHRISTIE,
Notary Public, N. Y. Co.

N. Y. Supreme Court.

WILLIAM LOCKWOOD *et al.*
against
EDWARD B. BARTLETT *et al.*

The defendants Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie, for their separate answer herein allege as follows:

First. They admit that the plaintiffs are partners as alleged.

Second. They have no knowledge or information sufficient to form a belief whether the plaintiffs on or about May 30, 1885, imported or received from Japan on the ship Vigilant 2,920 bales rags, and on the bark Battaglia from Italy 150 bales of rags, although they admit that a long time after said date, the plaintiffs were either owners of or came into control of the alleged numbers of bales of rags by said vessels respectively.

They deny that the plaintiffs were entitled to the possession or control of the rags referred to in the complaint at the time alleged in the complaint, or that they would have had the same except for any wrongful acts or conduct of these defendants.

569 Third. They admit that they were in partnership and in business as warehousemen under the name of E. B. Bartlett & Co.

They deny that they were engaged at the times named in the complaint in the business of disinfecting rags.

Fourth. They admit that the defendant Smith was at the times named health officer at the port of New York, but deny that he had full charge and control over vessels and cargoes coming into the said port, except as authorized by the statutes of the State of New York and the regulations of the United States and the port of New York.

Fifth. They deny the allegations of the fifth, sixth and seventh paragraphs of the complaint.

Sixth. They deny that the plaintiffs ever protested to them against any wrongful taking of said rags by these defendants or against the conduct of these defendants in or about the same, or that they duly demanded possession of said rags, but they admit that these defendants refused to deliver the same without payment of certain warehouse and labor charges which were due these defendants.

They deny that the amount of said charges *were* ever tendered or paid to these defendants until after a suit for claim and delivery had been instituted by the plaintiffs against these defendants for the recovery of the possession of said rags, which suit was discontinued by said plaintiffs, and the costs thereof paid to these defendants and said plaintiffs thereafter paid these defendants the amount of their charges and the claims of other parties for disinfection which were a charge against a lien upon said goods whereof these defendants had been notified.

They deny each and every other allegation of the complaint.

570 Wherefore these defendants pray that as to them the said complaint may be dismissed, with costs.

GOODRICH, DEADY & GOODRICH,
Att'ys for Def'ts E. B. Bartlett & Co.,
59 Wall Street, New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward B. Bartlett, being duly sworn, says:

That he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EDWARD B. BARTLETT.

Sworn to before me, this 22d day of June, 1886.

FRED'K GIBLIN,
Notary Public, Kings County.

Certificate filed in New York county.

571 New York Supreme Court.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, HENRY E. NITCHIE,
and WILLIAM M. SMITH.

The defendant, William M. Smith, answering the complaint herein, respectfully shows to the court:

First. He admits that at the times mentioned, and as alleged in the fourth paragraph of the complaint, he was the health officer of the port of New York charged with and exercising powers and duties respecting the admission of rags in said port under and pursuant to the laws, rules and regulations duly established and in force in said port governing the quarantine, and the admission of merchandise; and he alleges that in respect to the rags and merchandise mentioned and described in the complaint, he acted as such officer and not otherwise, with due and proper judgment and discretion, after careful enquiry into the facts, description and condition of such rags, and as required by law, "with due regard to the sanitary conditions of the port."

Second. The said defendant further alleges that at said times the said rags and merchandise in the same class were under and pursuant to said laws subject to, and could not be landed without purification and disinfection to be approved in the discretion of the said health officer; that the possession and control of the said rags in the port of New York was subject to said conditions, rules
572 and regulations, and was not interfered with or affected except in pursuance of the terms of the said laws, and the necessary conditions thereof, and that purification and disinfection was necessary and proper for said rags.

Third. The said defendant denies all the allegations of the fifth, sixth, seventh and eighth paragraphs of the complaint, and he denies that the plaintiffs have had any damages or injury whatsoever by or through him, and denies all information or belief that the plaintiffs have had any damage or injury by any of the defendants, and alleges that as he is informed and believes, the plaintiffs for their own interest and profit voluntarily caused the delivery of the said rags to, and used the labor and services of the said Bartlett & Co., for the purification and disinfection of the said rags, entering into a contract therefor, and thereafter voluntarily receiving into their possession the said rags after paying the prices agreed upon under said contract for such labor and services, and he further denies that he has had any combination, connection, collusion or conspiracy with any of the defendants or acted in any fraud or conspiracy whatsoever in the premises, and he denies that in respect to any of the matters alleged in the complaint he has acted or done anything, except in necessary and proper performance of his duty; he denies that he has unnecessarily required clean rags, not dangerous to health, to be disinfected; he denies that he has caused rags or any charges thereon to be given to any one as alleged in the complaint; he denies that he has given or endeavored to give the con-

trol and monopoly of disinfection to Bartlett & Co.; or to any persons,
and on the contrary he alleges that on proper certificates of disinfec-
tion, and with due regard to the sanitary conditions of the port, when
rags were not dangerous to the public health, and did not
573 require to be disinfected before discharge in this port, he has
not forbidden or prevented their admission.

Wherefore, the said defendant demands judgment that the said complaint be dismissed with the costs of this action.

W. P. PRENTICE,
Att'y for Def't William Smith, 155 Broadway, New York.

CITY AND COUNTY OF NEW YORK, *ss:*

William M. Smith, being duly sworn, deposes and says: That he is one of the defendants herein; that the foregoing answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

WM. M. SMITH.

Sworn to before me this 11th day of June, 1886.
GEO. S. SCOFIELD, JR.,
Notary Public for Richmond Co.
Certif. filed in Co. of N. Y.

574 Supreme Court Circuit, Part II.

APRIL 29, 1887.

WILLIAM B. LOCKWOOD and Ano.
against
EDWARD B. BARTLETT *et al.*

Present: Hon. George L. Ingraham, justice.

I hereby certify that this cause was this day tried by the court and a jury, and a verdict rendered therein for the plaintiff as against the defendant-, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitche, for the sum of $8,000, and the jury disagree as to William M. Smith. Motion for a new trial denied. Allowance of five per cent. granted. Sixty days to make a case, with a stay of all proceedings after notice of entry of judgment.

JAMES A. FLACK, *Clerk.*

575 Supreme Court, City and County of New York.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, HENRY E. NITCHIE, and WILLIAM M. SMITH.

The issues in this action having come on for trial before Mr. Justice George L. Ingraham and a jury at a circuit of this court, on the 18th day of April, 1887, and the issues having been tried, and a verdict having been rendered in favor of the plaintiffs as against the defendants Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie, for eight thousand dollars, and the plaintiffs' costs herein having been duly adjusted at six hundred and sixty $\frac{55}{100}$ dollars; now, on motion of Kelly & Macrae, attorneys for the plaintiffs, it is—

Adjudged, that William Lockwood and Emory W. McClintock, plaintiffs, recover of Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, defendants, the sum of eight thousand dollars, the amount found by the jury, with the further sum of six hundred and sixty $\frac{55}{100}$ dollars cost as taxed, making in all the sum of eight thousand six hundred and sixty $\frac{55}{100}$ dollars.

576 Supreme Court, City and County of New York.

William Lockwood and Emory W. McClintock, Plaintiffs,
against
Edward B. Bartlett Albert C. Woodruff, and Henry E. Nitchie, Impleaded with William M. Smith, Defendants.

Gentlemen: Please take notice that the above-named defendants Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie, hereby appeal to the general term of this court for the first department from the judgment entered herein on the 13th day of June in favor of the above-named plaintiffs and against the above-named defendants Bartlett, Woodruff and Nitchie for the sum of $8,660.55, and from each and every part thereof. And also from the order entered herein on the 29th day of April, 1887.

Dated New York, July 13th, 1887.

GOODRICH, DEADY & GOODRICH,
WOODRUFF & NITCHIE,
Att'ys for Def'ts, 59 Wall Street, New York.

To James A. Flack, clerk, &c., and Kelly & M-crae, att'ys for pl'ffs.

577 Supreme Court.

William Lockwood and Ano.
against
Edward B. Bartlett *et al.*

Bill of Particulars of Plaintiffs' Claim.

Charges paid E. B. Bartlett & Co.	$5,811 09
Depreciation in value of price of rags while detained	8,000 00
Counsel fees	1,000 00

City and County of New York, *ss:*

Emory W. McClintock, being duly sworn, says that the foregoing bill of particulars is true to the knowledge of deponent.

E. W. McCLINTOCK.

Sworn to before me this 14th day of June, 1886.

W. S. HOLBROOK,
[L. S.] *Notary Public, Kings County.*

Certificate filed in N. Y. county.

578 At a general term of the supreme court, held the 7th day of November, 1889, at the court-house, New York.

Present: Hon. C. H. Van Brunt, P. J.; Hon. C. H. Daniels, J.; Hon. Jno. R. Brady, J.

WILLIAM LOCKWOOD and Another
ag'st
EDWARD B. BARTLETT *et al.*

The appeal of defendants from the judgment entered herein on the 13th day of June, 1887, in favor of plaintiffs for the sum of $8,660.55 coming on to be heard, and after hearing Wm. W. Goodrich, Esq., of counsel for appellants, and W. Bourke Cockran and Wm. F. MacRae, Esqs., for respondents—

It is ordered and adjudged that, upon the plaintiffs stipulating within five days from the entry hereof to reduce the said judgment in the sum of $1,675.16, that the said balance be and the same is hereby affirmed without costs to either party, and in case no such stipulation is given within said time, then that the said judgment be reversed, and a new trial ordered with costs to appellants to abide the event.

A copy.
[L. S.] EDWARD F. REILLY, *Clerk.*

The plaintiffs hereby stipulate to reduce the judgment herein as directed by the general term as per foregoing order.

KELLY & MACRAE,
Att'ys for Pl'ffs.

New York, Nov. 27, 1889.

579 N. Y. Supreme Court, City and County of New York.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Plaintiffs,
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and Henry E. Nitchie, Impleaded with William M. Smith, Defendants.

Judgment.
4 December, 1889.

The appeal of the above-named defendants, Edward B. Bartlett, Albert C. Woodruff and Henry E. Nitchie from the judgment entered herein on the 13th day of June, 1887, in favor of the plaintiff for the sum of $8,660.55, coming on to be heard at a general term of this court held on the 8th day of May, 1889, and said general term having reduced said judgment in the sum of $1,675.16 and affirming the balance upon plaintiffs stipulating so to reduce it and said stipulation having been given, Now, on motion of Kelly & MacRae, attorneys for the plaintiffs and respondents,

It is adjudged, that said judgment be and the same is reduced in the sum of $1,675.16 and affirmed as to the balance without costs.

A copy.

[L. S.] EDWARD F. REILLY, *Clerk.*

580 Supreme Court, New York County.

William Lockwood and Emory W. McClintock, Plaintiffs,
against
Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, Defendants.
} Notice of Appeal.

Take notice that the above-named defendants hereby appeal to the court of appeals from the judgment entered in this action in the supreme court, New York, on the 4th day of December, 1889, in favor of the plaintiffs against the defendants affirming a judgment entered herein June 13th, 1887, in favor of the plaintiffs and against the defendants for the sum of $6,985.39, said judgment having been originally for the sum of $8,660.55, and having been reduced by stipulation to the said sum of $6,985.39, and the defendants appeal from each and every part of the same.

Dated, New York, Dec. 5th, 1889.

GOODRICH, DEADY & GOODRICH,
Att'ys for Defendants, 59 Wall St., N. Y.

To Kelly & MacRae, plaintiffs' att'ys, and Edward F. Reilly, clerk of New York Co.

State of New York,
City and County of New York, } *ss:*

I, Edward F. Reilly, clerk of the supreme court, in and for said
county, do hereby certify that the foregoing consist of certi-
581 fied copies of the notice of appeal and the judgment-roll on
file in my office.

In witness whereof I have hereunto set my hand and affixed my official seal this 10th day of December, A. D. 1889.

[SEAL.] EDWARD F. REILLY, *Clerk.*

First Department, General Term, May, 1889.

Chas. H. Van Brunt, P. J.
John R. Brady, Chas. Daniels, JJ.

WILLIAM LOCKWOOD and Another, Respondents,
against
EDWARD B. BARTLETT and Others, Appellants.
No. 21.

Appeal from a judgment entered in favor of the plaintiff- after trial before a jury at a circuit court.

Mr. William W. Goodrich, of counsel for appellants.
Mr. W. Bourke Cochran, of counsel for respondents.

VAN BRUNT, *P. J.:*

The complaint in this action in brief alleged that the defendants entered into a conspiracy to have certain of the plaintiffs' rags which they had imported, declared infectious, so that they might be disinfected under a process used by the defendants E. B. Bartlett
582 & Co. That the rags were taken possession of by the defendants, Smith and Bartlett & Co., and were by Bartlett & Co. partially subjected to a pretended process of disinfection and who refused to deliver the rags to the plaintiffs until their charges were paid, and which the plaintiffs were compelled to pay to get possession of the rags. The defendants by their answers denied any conspiracy and the firm of Bartlett & Co. alleged that they simply held the rags until their charges were paid.

The facts developed upon the trial seem to be substantially these:

The plaintiffs doing business under the firm name of Lockwood & McClintock, imported in the ship "Vigilant" from Japan, 2,920 bales of rags, which arrived in the port of New York about May 30, 1885, and upon the same day the vessel was passed by the health officer and allowed to proceed to the cities of New York or Brooklyn for the purpose of discharging her cargo.

It is claimed by the counsel for the appellants that this permit allowed the vessel to proceed to New York, "rags excepted."

It is difficult to see how this construction can be put upon the permits, because there is no intention manifested that the ship should discharge the rags before proceeding, and consequently it must have been intended that the vessel should take up to the city the rags. An inspection of the permits shows that this in the case. The words "rags excepted" are used in that part of the permits which describes the nature of the cargo. The words are "cargo general" ("rags excepted") It would appear that rags did not come under the definition of "general cargo," and hence was put upon the permit the fact that the cargo was general, except the rags.

On June 1st a permit was granted by the health authorities of the city of New York to land these rags.

The plaintiffs then went to the custom-house to enter the
583 rags pursuant to the law regulating the importation of goods,
and although they were free goods not liable to any duty, the
collector declined to receive the entry.

On the 3d of June the collector directed all goods upon this vessel for which no permit shall have been received to be sent to the Baltic stores kept by E. B. Bartlett & Co.

In the meantime the health officer of the port it appears had come to the conclusion that the rags should be disinfected, and on the 9th of June the collector directed the rags to be taken for disinfection to the Baltic stores, being the stores of defendant Bartlett & Co., to which stores they were lightered and where it is claimed they were disinfected.

The plaintiffs demanded their rags, but Bartlett & Co. refused to deliver the rags to the plaintiffs unless the lighterage, storage and disinfecting charges should be paid.

The plaintiffs also imported by the ship "Baltaglia" 150 bales of rags, which arrived at the port of New York June 6, 1885.

The health officer having certified that these rags might be disinfected at Robbins' reef, where the same parties who ran the disinfection at the Baltic stores had established themselves, unless it could be done at the Baltic stores, the collector ordered their transfer to Robbins' reef for disinfection, where it is claimed they were disinfected and there transferred to the Baltic stores, where Bartlett & Co. claimed to hold them until charges for lighterage, storage and disinfection were paid.

To get possession of these rags the plaintiffs were compelled to pay these charges and they then brought this action to recover the damages which they had sustained by the unauthorized acts of the defendants.

Upon the trial the jury found a verdict against Bartlett & Co. for
$8,000, but disagreed as to the defendant Smith.
584 A judgment was thereupon entered against Bartlett & Co.
and from such judgment this appeal is taken.

It is urged as one of the grounds of appeal that the court erred in taking the verdict in the form which it did. That the jury might have found a verdict against Bartlett & Co. and in favor of Smith, or until they either found for or against Smith no verdict could be received.

There is no question but that the plaintiffs could have submitted to a nonsuit and proceeded against Bartlett & Co. alone. It is true that there are allegations in the complaint of a conspiracy between Smith and Bartlett & Co. but these allegations were mere surplusage. The defendants were proceeded against as wrong-doers and they could have been proceeded against severally as well as jointly. If Bartlett & Co. had been sued upon the same allegations as those contained in the complaints and Smith had not been made a party they could not have objected.

This being the case as far as Bartlett & Co. are concerned it is immaterial whether Smith is or not charged and because the jury

First Department, General Term, May, 1889.

Chas. H. Van Brunt, P. J.
John R. Brady, Chas. Daniels, JJ.

WILLIAM LOCKWOOD and Another, Respondents,
against
EDWARD B. BARTLETT and Others, Appellants.
No. 21.

Appeal from a judgment entered in favor of the plaintiffs after trial before a jury at a circuit court.

Mr. William W. Goodrich, of counsel for appellants.
Mr. W. Bourke Cochran, of counsel for respondents.

VAN BRUNT, *P. J.:*

The complaint in this action in brief alleged that the defendants entered into a conspiracy to have certain of the plaintiffs' rags which they had imported, declared infectious, so that they might be disinfected under a process used by the defendants E. B. Bartlett 582 & Co. That the rags were taken possession of by the defendants, Smith and Bartlett & Co., and were by Bartlett & Co. partially subjected to a pretended process of disinfection and who refused to deliver the rags to the plaintiffs until their charges were paid, and which the plaintiffs were compelled to pay to get possession of the rags. The defendants by their answers denied any conspiracy and the firm of Bartlett & Co. alleged that they simply held the rags until their charges were paid.

The facts developed upon the trial seem to be substantially these:

The plaintiffs doing business under the firm name of Lockwood & McClintock, imported in the ship "Vigilant" from Japan, 2,920 bales of rags, which arrived in the port of New York about May 30, 1885, and upon the same day the vessel was passed by the health officer and allowed to proceed to the cities of New York or Brooklyn for the purpose of discharging her cargo.

It is claimed by the counsel for the appellants that this permit allowed the vessel to proceed to New York, "rags excepted."

It is difficult to see how this construction can be put upon the permits, because there is no intention manifested that the ship should discharge the rags before proceeding, and consequently it must have been intended that the vessel should take up to the city the rags. An inspection of the permits shows that this in the case. The words "rags excepted" are used in that part of the permits which describes the nature of the cargo. The words are "cargo general" ("rags excepted") It would appear that rags did not come under the definition of "general cargo," and hence was put upon the permit the fact that the cargo was general, except the rags.

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In the meantime the health officer of the port it appears had come to the conclusion that the rags should be disinfected, and on the 9th of June the collector directed the rags to be taken for disinfection to the Baltic stores, being the stores of defendant Bartlett & Co., to which stores they were lightered and where it is claimed they were disinfected.

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To get possession of these rags the plaintiffs were compelled to pay these charges and they then brought this action to recover the damages which they had sustained by the unauthorized acts of the defendants.

Upon the trial the jury found a verdict against Bartlett & Co. for
$8,000, but disagreed as to the defendant Smith.

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and from such judgment this appeal is taken.

It is urged as one of the grounds of appeal that the court erred in taking the verdict in the form which it did. That the jury might have found a verdict against Bartlett & Co. and in favor of Smith, or until they either found for or against Smith no verdict could be received.

There is no question but that the plaintiffs could have submitted to a nonsuit and proceeded against Bartlett & Co. alone. It is true that there are allegations in the complaint of a conspiracy between Smith and Bartlett & Co. but these allegations were mere surplusage. The defendants were proceeded against as wrong-doers and they could have been proceeded against severally as well as jointly. If Bartlett & Co. had been sued upon the same allegations as those contained in the complaints and Smith had not been made a party they could not have objected.

This being the case as far as Bartlett & Co. are concerned it is immaterial whether Smith is or not charged and because the jury have disagreed as to Smith they are deprived of no rights because they cannot claim that Smith should contribute.

The plaintiffs by their action may have released Smith from any further claim in this action, but if they have it is of no consequence to Bartlett & Co. as has been seen.

The main question then which is presented by this appeal is, were all the proceedings, by which the charges claimed by Bartlett & Co. were incurred, without the authority of law?

It is sought to justify the action of the collector because of the provisions of the Revised Statutes of the United States which authorize the collector to take possession of unclaimed merchandise and store the same in any private bonded warehouse, such as the Baltic stores.

585 But the difficulty with this claim of the defendants is that this merchandise was not only not unclaimed but very much claimed.

The plaintiffs demanded its entry. It was not liable to the payment of any duties, and it was the duty of the collector under section 2826 to grant a permit for the landing thereof.

Where the owner was claiming possession of his property demanding a permit for the landing, it being confessedly free and not liable to duty it seems to have been the duty of the collector to have granted the necessary permits, and his seizure of the goods and the causing them to be lightered to the Baltic stores was an unauthorized act, and for the expenses incurred in the performance of that act certainly no person could be allowed to hold the goods from their owner.

Neither can the acts of the collector be justified by sections 4792 and 4793 of the statutes.

By section 4792 officers of the customs are requested to observe the health laws of any State, and are required to aid in their execution, and by section 4793 in case a vessel by such laws is prevented from coming to the port of entry or delivery by law established in any collection district, the collector may grant his permit for the unloading of the cargo at some other place where such health laws permit.

In these sections no power is found to do anything except in aid of the health authorities in the performance of their duties, and to authorize unloading at some other place in the collection district other than the regular port of entry.

The goods in question were discharged at the port of entry and no power under this last section is pretended to have been exercised.

The question seems, therefore, to resolve itself into this. Did the health officer direct the seizure of these goods, their conveyance to the Baltic stores in the one case and to Robbins' reef in the other, and their disinfection by the disinfecting Co., if so, had he the power so to do, and to make the goods liable for the expenses so incurred?

586 In view of the evidence in this case, it is not at all necessary to discuss the power of the health officer, or as to whether

he had or had not the power to do these various things, because it does not appear that the health officer directly ordered any one of these things to be done and it was for the want of this direct evidence probably that the jury, under the instructions of the court, did not find a verdict against the health officer.

The learned court directly charged this proposition and no exception was taken to it, and the only reason that the case could be allowed to go to the jury against the health officer was that there was some evidence from which the jury might have found collusion between Bartlett & Co. and such health officer. This evidence was not deemed sufficient by the jury, and so no verdict was rendered against the defendant Smith. This fact, however, in no way relieves Bartlett & Co. from the position in which they find themselves. The health officer not having directed this procedure, no shelter can be obtained from any supposed power which the health officer might possess.

The collector having no power to send any but unclaimed goods to the public stores as has been seen could not refuse a permit for these goods to land and cause them to be sent to the public stores to be disinfected at the expense of the owner, and if he did so he as well as all other persons who detained the goods because of the non-payment of these unauthorized charges became liable in damages for such unauthorized detention.

This principle seems to be clearly established by the case of Badger *v.* Guiteriez, 111 U. S., 734.

In that case a vessel had incurred a penalty for taking out improper papers, an application being made for proper papers, acting under instructions from the Secretary of the Treasury the collector of the port to whom application was made seized and detained the papers submitted to him on the application for proper papers
587 and withheld from the vessel the papers to which it was lawfully entitled, and the court held that the collector was liable for the damages sustained.

The act of the collector was entirely unauthorized and hence his official character was no shield.

The act of the collector in the case at bar being without authority such act could confer no authority upon Bartlett & Co. to hold the goods until the charges incurred because of the unauthorized acts of the collector were paid.

It cannot be said that Bartlett & Co. did not have control of these rags because goods in bonded warehouses are in the custody and control of the collector.

These goods were not held as bonded goods, no duties were to be collected upon them, and even after permits had been issued for delivery Bartlett & Co. held the goods because of their alleged liens upon them. It was then Bartlett & Co. who were detaining the goods and not the collector, and at any rate they then became responsible and in fact they never did deliver the goods until these illegal demands were paid to them. The claim that Bartlett alone was responsible and not the other members of the firm is untenable.

Bartlett was acting for the firm in the business of the firm, protecting its interest and demanded and collected for the firm these illegal charges. Therefore every member of the firm became liable for the wrongs suffered by the plaintiffs.

The verdict, however, seems to have been excessive. It would seem that punitive damages could not be recovered and simply damages of detention.

The evidence showed a payment for alleged charges of $5,314.15, which the plaintiffs were entitled to recover back with interest. The interest on this sum to the date of trial, April 29, 1887, was $491.45, making a total of $5,805.50. The verdict was for $8,000,
leaving $2,194.40 as damages of detention. As there was
588 no fall in the market price of the rags, the damages for de-
tention could only be interest on the value of the rags detained. This value being $30,000, and the goods being detained from June 1st to October 9th, the interest for that period would be about $675, which alone could be recovered as damages of detention, and the verdict therefore must be reduced by $1,519.40.

It has not become necessary to consider the various exceptions to the evidence as under the conceded facts the plaintiffs would be entitled to recover from Bartlett & Co. the amount for which this judgment is sustained—upon the plaintiffs stipulating to reduce the judgment by $1,519.40, the judgment for the balance will be affirmed without costs to either party; in case such stipulation is not given the judgment must be reversed and a new trial had with costs to the appellants to abide the final event.

CHAS. DANIELS.

I concur.

J. R. B.

589 At a special term of the supreme court of the State of New York, held at the court-house, in the city of New York, on the 2 day of February, 1892.

Present: Hon. Miles Beach, justice.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Plaintiffs,
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and HENRY E. NITCHIE, Impleaded with WILLIAM M. SMITH, Defendants.

The above-entitled action having been tried at a circuit court held on the 29th day of April, 1887, before Hon. George L. Ingraham and a jury and a verdict rendered therein for the plaintiffs as against the above-named defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, for the sum of eight thousand dollars ($8,000) damages, and pursuant thereto a judgment having been duly entered in this action on or about the 13th day of June, 1887, in favor of the said plaintiffs against the said defendants above named for the sum of eight thousand six hundred sixty $\frac{55}{100}$ dollars ($8,660.55), the amount of the said recovery and the costs of said action;

And the said defendants, Bartlett, Woodruff, and Nitchie,
590 having appealed to the general term of this court from the
said judgment and on or about the 7th day of November, 1889, an order having been made by the general term of this court whereby it was ordered and adjudged that upon the plaintiffs stipulating to reduce the said judgment recovered as aforesaid in the sum of sixteen hundred seventy-five $\frac{16}{100}$ dollars (1,675.16), the balance of the said judgment be, and the same was thereby, affirmed without costs to either party, and the plaintiffs thereupon having stipulated to reduce the said judgment accordingly as directed by the order of the said general term and judgment having been thereupon entered in this court on the 4th day of December, 1889, upon the said order of the said general term, whereby it was adjudged that the said judgment aforesaid be, and the same was thereby, reduced in the sum of sixteen hundred seventy-five $\frac{16}{100}$ dollars ($1,675.16) and affirmed as to the balance without costs;

And the said defendants, Bartlett, Woodruff, and Nitchie, having thereupon appealed to the court of appeals from the judgment so entered and the said appeal having been duly argued in the said court of appeals and the said court of appeals having thereupon ordered and adjudged that the judgment of the general term of this court so appealed from in this action be reversed and a new trial granted, with costs to abide the event, unless the plaintiffs shall
stipulate within thirty days to reduce the recovery of damages
591 in this action to the sum of three thousand one hundred eighty-
two $\frac{50}{100}$ dollars ($3,182.50), and in that event that the judgment so modified be affirmed without costs to either party in the said court; and the said court of appeals having further ordered that the record of the said action and the proceedings in the said court of appeals be remitted to this court, there to be proceeded upon according to law, and the same having been so remitted and being now filed in this court—

It is, on motion of Messrs. Bangs, Stetson, Tracy & MacVeagh, attorneys for the plaintiffs Lockwood and McClintock above named—

Ordered that the said order and judgment of the said court of appeals be, and the same is hereby, made the order and judgment of this court.

And the plaintiffs having duly made and given the stipulation provided for by the said order and judgment of the court of appeals, which is herewith filed, it is now ordered that the judgment entered in this action on the 13th day of June, 1887, in favor of the said plaintiffs, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, be, and the same is hereby, modified so that the amount of the recovery of damages by the plaintiffs from the defendants Bartlett, Woodruff, and Nitchie be, and the same is hereby, fixed and determined at the sum of three thousand one hundred eighty-
two $\frac{50}{100}$ dollars ($3,182.50), which at the date of the entry
592 of the said judgment amounted to the sum of two hundred
ninety-seven $\frac{63}{100}$ dollars ($297.63), making in all the sum of three thousand four hundred seventy-nine $\frac{53}{100}$ dollars ($3,479.53),

together with the costs as taxed upon the trial of this action, namely, six hundred sixty $\frac{55}{100}$ dollars ($660.55), making in all the sum of four thousand one hundred forty $\frac{8}{100}$ dollars ($4,140.08).

And it is thereupon ordered, adjudged, and decreed that the said plaintiffs, William Lockwood and Emory W. McClintock, recover of the defendants Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie the said sum of four thousand one hundred forty $\frac{8}{100}$ dollars ($4,140.08), with interest thereon from the 14th day of June, 1887, amounting at this date to the sum of — dollars, making in all the sum of — dollars, for which sum the plaintiffs Lockwood and McClintock are entitled to execution against the said defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, and that the plaintiffs have execution accordingly.

MILES BEACH, *J. S. C.*

Endorsed: N. Y. supreme court. William Lockwood and another against Edward B. Bartlett *et al.* Copy proposed order and notice of settlement. Bangs, Stetson, Tracy & MacVeagh, attorneys for pl'ffs, 15 Broad street, New York city, New York.

To Goodrich, Deady & Goodrich, att'ys for def'ts, app'l'ts, 59 Wall St.:

Take notice that an order, of which the foregoing is a copy, will be presented for settlement at a special term of this court to be held at chambers, at the court-house, in the city of New York, on the 4th day of January, 1892, at half past ten in the morning.

Dated December 31, 1891.

BANGS, STETSON, TRACY & MACVEAGH,
Attorneys for Plaintiffs, Respondents.

593 N. Y. Supreme Court, City and County of New York.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Pl'ffs, Resp'd'ts,
against
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and HENRY E. NITCHIE, Impleaded with WILLIAM H. SMITH, Def'ts, App'l'ts.

The defendants, Bartlett, Woodruff and Nitchie, having appealed to the court of appeals from the judgment of the general term of this court entered in this action in the office of the clerk of the city and county of New York on the 4th day of December, 1889, and said appeal having been duly argued by Mr. W. W. Goodrich, of counsel for the said appellants, and by Mr. Charles MacVeagh, of counsel for the respondents, Lockwood and McClintock—

And the court of appeals having thereupon ordered and adjudged that the judgment of the general term aforesaid be reversed and a new trial granted with costs to abide the event, unless the plaintiffs stipulate within thirty days to reduce the recovery of dam-
594 ages in this action to the sum of $3,182.50, and that if they
so stipulate the judgment as modified be affirmed without costs to either party in the court of appeals, and the record and proceedings in the court of appeals having been remitted to this court and filed, to be proceeded upon according to law, and the plaintiffs

having stipulated in accordance with the decision of the court of appeals to reduce the recovery of damages in this action to the said sum of $3,182.50, so that the amount of the judgment heretofore recovered and entered in this action in the office of the clerk of the supreme court of the city and county of New York on the 13th day of June, 1887, in favor of the plaintiffs and against the defendants be reduced to the sum of $4,140.08, and this court, by order duly made and entered in the office of the clerk aforesaid on the 2nd of February, 1892, having directed that the judgment of the court of appeals be made the judgment of this court, and that the recovery of damages in this action be reduced to $3,182.50, and by a subsequent order, filed on Feb'y 5th, having directed that the judgment in this action be further reduced by deducting therefrom the sum of $226.03 and having ordered that the judgment of the general term as modified be affirmed, on motion of Bangs, Stetson, Tracy & MacVeagh, attorneys for the respondents, Lockwood and McClintock, it is—

Adjudged that the amount of the judgment entered in
595 this action on the 13th day of June, 1887, be, and the same
is hereby, reduced to the sum of $3,914.05, and that, except as so modified, the judgment of the general term appealed from as aforesaid be in all respects affirmed, and that the plaintiffs have execution against the defendants, Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, for the sum of three thousand nine hundred and fourteen and $\frac{5}{100}$ dollars, together with interest thereon from the 13th day of June, 1887.

(S'g'd) WM. J. McKENNA, *Clerk.*

A copy.

[SEAL.] (S'g'd) WM. J. McKENNA, *Clerk.*

Endorsed: N. Y. supreme court. William Lockwood and another against Edward B. Bartlett *et al.* Copy judgment. Bangs, Stetson, Tracy & MacVeagh, attorneys for pl'ffs, resp'd'ts, 15 Broad street, New York city, New York. To Goodrich, Deady & Goodrich, att'ys for defendants, 59 Wall St.

Take notice that the judgment, of which the within is a copy, was this day duly entered and filed in the office of the clerk of the supreme court of the city and county of New York.

Dated February 10th, 1892.

BANGS, STETSON, TRACY & MACVEAGH,
Attorneys for Pl'ffs, Resp'd'ts, 15 Broad Street,
New York City, New York.

To Goodrich, Deady & Goodrich, defendants' attorneys.

596 Court of Appeals, Second Division.

WILLIAM LOCKWOOD and EMORY W. MCCLINTOCK, Respondents,
vs.
EDWARD B. BARTLETT, ALBERT C. WOODRUFF, and Henry E. Nitchie, Impleaded with William M. Smith, Appellants.
Opinion.

Wm. W. Goodrich, for appellants.
Charles MacVeagh, for respondent.

Appeal from judgment entered upon order of the general term of the supreme court, in the first judicial department, modifying and affirming as modified judgment entered on a verdict.

The plaintiffs were the owners and consignees of a quantity of rags imported from Hiogo, Japan, in ship Vigilant, which arrived at the port of New York, May 30, 1885, and imported from Leghorn, Italy, in bark Battaglia, which arrived at same port June 6, 1885.

This action was brought to recover damages alleged to have been sustained by the plaintiffs by reason of the wrongful taking 597 and detention of the rags, and to obtain the possession of which, they were required to and did under protest pay the appellants a large sum of money claimed for the expenses of carriage, disinfection and storage for which charges were made. And they allege that this was consummated by conspiracy between the defendants Bartlett, Woodruff and Nitchie, partners constituting the firm of E. B. Bartlett & Co., and the defendant Smith. The defense was founded upon the alleged right through the authority derived through the United States Treasury Department, the collector and health officer of the port of New York. The defendant Smith, was the health officer.

In December, 1884, E. B. Bartlett & Co. requested the U. S. Treasury Department to select their warehouse in the city of Brooklyn, and known as the Baltic stores, as a warehouse for the storage and disinfection of imported rags.

The matter of landing and storage of rags there for that purpose was referred to the health officer, who deemed it a proper place, and thereupon the Treasury Department approved the selection, and instructed the collector of customs that where rags requiring disinfection form part of a cargo they be placed on lighters and taken to the place so designated, and if the whole cargo of a vessel was rags they should be unloaded at that place.

On June 3, 1885, the collector, by general order, directed the inspector on board the ship Vigilant to send to the Baltic stores all merchandise for which no permit or order had been received by him to the contrary of such direction, except articles of the character there mentioned. Rags were not within the exception. And June 9th, under that general order the collector directed such inspector to send on bonded lighters to Baltic stores for disinfection all rags on the Vigilant for which no permit had been received.

598 This was done accordingly. And certificates were afterwards made by the U. S. inspector of rags that they were disinfected.

With a view to the objection of the health authorities of Brooklyn to the storage of rags at the Baltic stores for that purpose permission was given to the disinfecting company to establish disinfecting works at quarantine. This was done at Robbin's reef. On or about June 19, 1885, pursuant to the direction of the collector, the rags on the bark Battaglia were unloaded, and by bonded lighters, taken to Robbin's reef for disinfection. The lighterage charges were paid by E. B. Bartlett & Co., and the bill for them and for disinfection and storage was made out to their credit against the plaintiffs, amounting to $4,904.90 on account of the rags taken from the Vigilant, and $409.25 on account of those taken from the Battaglia. And they refused to deliver the rags to the plaintiffs unless those bills were paid. They were paid to Bartlett & Co., under protest, about October 9, 1885, and the rags were then delivered to them. The trial court instructed the jury that the defendants, other than Smith, were liable to the plaintiffs for the amount so paid, with interest from the time of payment, and directed them to find accordingly; and submitted to them the question whether the plaintiffs were entitled to recover any and what amount of further damages arising out of the taking and detention of the property. Also submitted to the jury the question of liability of the defendant Smith. The jury were unable to agree on a verdict for or against him; and they found a verdict against the other defendants for $8,000. Judgment was entered against them accordingly, with costs. The general term reduced the recovery of damages to the amount paid by the plaintiffs to those defendants, with interest, and as so modified, affirmed the judgment.

599 BRADLEY, *J.*:

The question of the liability of the defendants, other than Smith, as presented at the trial, was by the parties treated as one of law only, so far as related to the claim for the money paid by the plaintiffs to obtain the possession of the goods, and to which amount the modification of the judgment by the general term reduced the recovery. And if there was any evidence to support it to that extent, the direction of a verdict for that sum was without error, unless the exceptions having relation to the nature of the action, or the efficiency of the verdict were well taken. (Winchell *vs.* Hicks, 18 N. Y., 558; Dillon *vs.* Cockcroft, 90 *id.*, 649.)

The plaintiffs were the owners of the rags, and they were unconditionally entitled to possession of them, and without payment of the charges asserted against them unless by force of some rule of law, regulation or authority the goods were lawfully taken and detained for the alleged purposes and subjected to the lien of charges for carriage, disinfection and storage, or for some portion of them. The defendants contend that the rags were taken and treated pursuant to legal authority, and that the amount of the charges so claimed was a lien upon the property, by which was justified the refusal of Bartlett & Co., until payment was made, to deliver it to plaintiffs.

Sanitary regulations are properly and necessarily provided for and applied at ports of entry for vessels and cargoes from foreign countries. And the health officer of the port of New York is clothed with power to use means to protect the public against contagia from infected vessels and cargoes arriving there from elsewhere, pursuant to the provisions of the statute "establishing a quarantine, and defining the qualifications, duties and powers of the health officer for the harbor of New York." (L. 1863, ch. 358; L. 1865, ch. 592.) And it is provided by the statutes of the United States 600 that the quarantine and other restraints established by the health laws of any State respecting any vessels arriving in any port thereof shall be observed by the officers of customs, &c., and all such officers of the United States shall faithfully aid in the execution of such quarantine and health laws, and as they shall be directed from time to time by the Secretary of the Treasury. (U. S. R. S., sec. 4792.) And whenever by the health laws of any State or by the regulations made pursuant thereto any vessel arriving within the collection district of such State is prohibited from coming to the port of entry or delivery, and such health laws require or permit the cargo of the vessel to be unladen at some other place within or near the district, the collector after due report to him may grant his warrant or permit for the unlading or the charge thereof under the care of the surveyor or of an inspector at some other place where such health laws permit, and upon the conditions and restrictions which shall be directed by the Secretary of the Treasury. (*Id.*, section 4793.) The rags were free from duty, and the only ground upon which the detention of them from the plaintiffs could lawfully be justified is that it was with a view to the protection of the public health. This was apparently the object, and whether the action was duly had for that purpose remains to be considered.

By reference to orders and circulars from the Treasury Department to the collector and through the latter, as well as by regulations of the health officer, it appears that provision was made with a view to such protection.

In the quarantine regulations promulgated by the health officer in August, 1884, was the provision that vessels with cargo wholly or in part rags from an infected port or district would not be given pratique; "vessels with rags from healthy ports would be required to furnish satisfactory evidence that they had been gathered in districts where no suspicion of cholera existed, in default of 601 which the cargo would be subject to the regulation which related to such a cargo from an infected port." And that the evidence "must consist of an affidavit made by the original shipper before the U. S. consul at the port of shipment that the rags have not been gathered in cholera-infected districts and the certificate of such consul that the person making the affidavit is a man of good character and entitled to credit." In the consular certificate annexed to the affidavit of the shipper of the rags on the Vigilant the requirement relating to the character and credit of the affiant was not observed.

By circular issued by the Secretary of the Treasury in November, 1884, the unlading of rags from infected ports, amongst which were classed France, Italy and all Mediterranean and French ports, was prohibited; and it was directed that no old rags should be landed at any port of the United States except on a certificate of the U. S. consular officer at the port of departure that they were not gathered or baled at or shipped from any infected place or any region contigious thereto, and that the order would not be construed to allow the unlading of any old rags except upon the usual permit of the local quarantine or health officers. This circular, directed to officers of customs and others, was in harmony with the regulations of the health office, and in aid of their enforcement.

In December following another circular of the Secretary of the Treasury, in like manner issued to the collectors of customs, directed that no old rags, except those afloat before January 1, 1885, on vessels bound directly to the United States, should be landed there from any vessel except upon disinfection at the expense of the importers. And on January 12th, 1885, in a circular of the Secretary of the Treasury to the collector of the port of New York, and in which was approved the selection of the Baltic stores as a place for storage and disinfection of rags, it was provided that where 602 an entry should be presented for rags which had not been disinfected, it should be accepted, but the permit to land should be coupled with the condition that the rags be taken to the proper storehouse for disinfection, and only be delivered therefrom upon a further permit issued by the collector upon the certificate of the inspector in charge of the store that the requirements of the circular had been complied with. Following this, and on January 14th, the collector, by his order, directed that on entry of old rags shipped on and after the first of that month, and which had not been disinfected prior to importation, the permit would have written on the face of it directions to the inspector to send the rags to the Baltic stores by bonded lighters for disinfection. This is in the main the situation as represented by the regulations, orders and circulars on the 30th of May, 1885, when the ship Vigilant with the rags from Hiogo, Japan, arrived; and a permit or pass was issued by the deputy health officer giving the vessel permission to proceed, but preceding the words of permission, and opposite "cargo general," were the words "rags excepted." This, as explained by the evidence of the health officer, meant that the vessel be allowed to proceed to the dock and discharge its cargo other than rags. And this is a reasonable interpretation of the permit in that respect. The witness said this was the usual custom at the port in respect to certain articles, to expedite delivery to merchants. After the general order of the collector to send to the Baltic stores all the merchandise, with specific exceptions, on the Vigilant for which no permit had been received by the inspector on board to the contrary of such direction had been issued, and on June 5th the collector was instructed by circular from the Secretary of the Treasury that as to rags "per Vigilant," which importers claimed were mostly on board before January 1, to submit the matter to the health officer, 603 and to be governed by him in respect to it. After his attention was called by the collector to this instruction, the health officer concluded a lengthy communication of date June 6, 1885, to the collector, as follows: "It seems, therefore, advisable that for the present the rule of disinfection should be general, and that for reasons which have been set forth the rags on the Vigilant should not be an exception to the rule." The collector thereupon and on June 9th directed the inspector in charge of the ship Vigilant (under general order of *the* June 3d) to send on bonded lighters to the Baltic stores, all rags for which no permit had been rec ived. This was done, and it and what followed in respect to the rags on the Vigilant resulted in the consequences of which the plaintiffs complain.

On June 10 the health officer made a certificate to the effect that the rags "per ship Vigilant from Hiogo (Japan) to be disinfected are not from a cholera-infected port." But by it he treats the rags subject to disinfection in accordance with his letter of the 6th of June to the collector. The Secretary of the Treasury relieved his department from further responsibility on the subject of disinfection of rags by his circular of June 10th, by which it was ordered that all circulars of the department concerning the disinfection of imported old rags were revoked; and that all of them thereafter imported from foreign countries should be admitted to entry at the custom-house upon the production of permits from the health officers at the port of importation, duly authorizing the landing of them; and that vessels carrying old rags would be detained by the quarantine officers, and held subject to the order of the proper health authorities at the port of destination. And two days later, by another circular of the Secretary of the Treasury, the collector was directed to notify the proprietors of warehouses where disinfection had theretofore been effected under his (collector's) supervision, that the disinfection of old rags was under the exclusive juris- 604 diction of the health officer, and must be done at such places as he might designate; and that the designation of their warehouse for such purpose was revoked. By another circular of the Secretary of the Treasury to the collector, of June 11th, referring to the desire of the consignees of the rags per Vigilant to be governed by the circular of the 10th, he advised that the department had no objection to this, with the understanding that all the facts be first submitted to the health officer. It seems that pursuant to the pre-existing regulations on the subject the disinfection at the Baltic stores of the rags taken from the Vigilant was certified by the United States inspector of rags in charge of the warehouse.

The rags imported in the Battaglia were on or about the 19th of June, taken by lighters to Robbin's reef, a place in quarantine designated by the health officer for disinfection. The specific reference made to the regulations, orders and directions of the health officer and Treasury Department, and the execution of them directed by the collector, sufficiently show the manner the authority was

given, assumed and exercised in taking the possession of the rags for the purposes there indicated. And whatever the Secretary of the Treasury, and through him the collector, was lawfully permitted to do in that respect, was in aid of the health officer and in observance of the health laws of the State. The direction of the collector that the rags be sent to the places where they were taken from the vessels, was pursuant to the regulation or requirement that they should be disinfected, and it may be said to have been given pursuant to direction from the Secretary of the Treasury and in aid of the health officer in the execution of his official power by the observance of the regulations made by him in that behalf. And although these rags came within the rule or regulation adopted by him for disinfection, and by his approval aud advice were sent to the place where they were taken for that purpose, he testified
605 that he never gave any order for the disinfection of the rags on either of the two vessels. While his regulations provided that it be done, and for that purpose the transfer of the rags from the vessels to the warehouses was necessary, it does not appear that he employed anybody to do it. And, so far as appears, the work of disinfection was not conducted under the supervision or control of the health officer, nor pursuant to his employment of the disinfecting company, which owned the machine by which it was done, or of E. B. Bartlett & Co., who, under an arrangement with the company, operated the machine in performance of the work. The goods were sent to the warehouse apparently for the purpose of disinfection, and they assumed to do it without any employment or direction of the health officer, and did it without any approval by him of the efficiency of the work or of the charges resulting from it. This method of creating charges against imported goods is not fairly within the purpose and meaning of the statute, which provides: "Whenever any expense shall be incurred by the health officer, or whenever any services shall be rendered by him or his employees in the discharge of the duties imposed upon him by law in relation to vessels, merchandise, baggage, dunnage," &c., "under quarantine, such expenses and services shall be paid for to the health officer by the master of the vessels," &c. (L. 1865, ch. 592, sec. 6), and such expenses, services and charges shall be a lien on the vessels, merchandise and other property in relation to which they shall have been made or such services of the health officer shall have been rendered (*id.*, sec. 7). The difficulty with the claim for disinfection is that the company or persons doing it had no direction of the health officer for that purpose, nor was it done by his employees. The statute contemplates that charges of this character shall be incurred only by means of the official action, or in executing the orders of the health officer and be subject to his control through those
606 whom he may employ to perform the service. His official sanction and responsibility were essential to the creation *in invitum* of charges upon the property of the plaintiffs. Those for the alleged service of disinfection seem not to have had such support, and therefore were not a lien upon the rags. But this difficulty is not necessarily applicable to the charges for lighterage and storage.

The Baltic stores had under the advice and approval of the health officer of the port of New York, and the health commissioner of Brooklyn, been selected and designated by the Secretary of the Treasury, as a warehouse for the storage and disinfection of imported rags, and Robbin's reef had also been duly designated as another place for disinfection of like goods. The collector under his authority in view of the regulation for disinfection of the rags on the two vessels adopted by the health officer, was justified in directing as he did the sending of the rags to those places, and the expenses of such transfer were presumptively a lien upon the property to which they related. No specific order or direction of the health officer is essential for that purpose. It is sufficient that it was done pursuant to regulations, within his power, made by him. Of course if the transfer of the rags to those places for any purpose was caused by collusion or conspiracy between the health officer and Bartlett & Co., no lien in behalf of the latter could result for the charges and storage. But while that was charged in the complaint, it was not supported by the verdict taken against the appellants alone, and is entitled to no consideration in the case as now presented. The question is solely one of power and authority upon the assumption that the health officer acted in good faith, which has the support of presumption since the jury failed to find a verdict against the defendants upon that issue. In view of what has already been observed, that which was done by way of transfer of the rags from the vessel to the selected and designated ware-
607 houses for the purposes contemplated, and within the power of the health officer, and in aid of the exercise of which the direction of the collector to make the transfer may have been legitimately given and executed; and as the case is now presented it must be so treated. It follows that the charges for lighterage paid by Bartlett & Co., according to the custom in such cases, and for the storage in their Baltic stores, for the time the goods properly remained there, were a lien upon the rags. But so far as the defendants required the payment of the further claim for disinfection as a condition of the delivery, they were chargeable with duress of property, the right to recover back those two items of the bill and each of them is challenged by exceptions taken. It is unnecessary to consider the question whether or not the defendants were entitled to the full amount charged for storage as there is no basis furnished by the evidence to sever it.

It is urged that there was no verdict effectual to support the judgment because it was found only against the defendants other than Smith, and none as to him was rendered by the jury.

The action was in tort. The charge of conspiracy in the complaint was not necessarily the controlling element of its nature, and it did not require a verdict for or against all of the defendants jointly upon the cause of action there alleged. The defendant Smith was not chargeable with the act of refusal to deliver the property to the plaintiffs, nor did he receive any of the money paid by them to obtain the possession of the rags. His alleged liability was founded upon the charge of conspiracy and collusion with the other defendants for the purpose of enabling them to create the charges and assert the lien to the prejudice of the plaintiffs. And as the plaintiffs consented to and did accept the verdict against those defendants, it is difficult to see any further support for the action against the defendant Smith while the recovery on the verdict remains effectual. In Perkins *vs.* Mount (45 Barb., 422), the cause of action as 608 alleged in the complaint was upon a joint contract of the defendants, which denies to that case any necessary application to the present case. The money was paid by the plaintiffs to the defendants upon bills in favor of E. B. Bartlett & Co. who refused to deliver the possession of the rags to the plaintiffs until payment was made. All the members of that firm were for the purposes of the relief equally chargeable to the plaintiffs. These views lead to the conclusion that the judgment should be reversed and a new trial granted, costs to abide the event, unless the plaintiffs stipulate to reduce the recovery of damages to three thousand one hundred and eighty-two dollars and fifty cents, and in that event the judgment be so modified, and as modified affirmed, without costs in this court to either party.

"All concur, except Potter and Vann, J. J., not voting."

A copy.

H. E. SICKELS, *Reporter*,
Per C.

609

Supreme Court, New York Co.

William Lockwood and Another
against
Edward B. Bartlett and Others.

The defendants herein assign the following errors herein:

First. That the judgment awards to the plaintiffs damages to the amount of $3,914.05 and interest from the 13th day of June, 1887, and each and every part thereof.

Second. That the court held that under the statutes of the United States the U. S. Government had no right to order the disinfection of the plaintiffs' rags.

Third. That the court held that under the statutes of the United States the Treasury Department had no right to order the disinfection of the plaintiffs' rags.

Fourth. That the court held that under the statutes of the United States that the collector of the port of New York had no right to order the disinfection of the plaintiffs' rags.

610 Fifth. That the court held that the rags were not disinfected by the authority and under the order of the United States Government or the Treasury Department or the collector of customs of the port of New York.

Sixth. That the court held that the rags by the ship Vigilant, although ordered by the collector to be sent to the bonded warehouse of E. B. Bartlett & Co. for disinfection, were not disinfected by the orders of the health officer of the port of New York.

Seventh. That the court held that the rags by the ship Battaglia, although ordered by the collector to be sent to the bonded warehouse of E. B. Bartlett & Co. for disinfection, were not disinfected by the orders of the health officer of the port of New York.

Eighth. That the court held that a specific order from the health officer of the port of New York for the disinfection of the particular goods on the Vigilant was necessary, inasmuch as it appears by the evidence that general orders were given by him for the disinfection of all such goods, and that under such order the rags by the Vigilant were disinfected without specific orders as to that particular cargo.

611 Ninth. That the court held that a specific order from the health officer of the port of New York for the disinfection of the particular goods on the Battaglia was necessary, inasmuch as it appears by the evidence that general orders were given by him for the disinfection of all such goods, and that under such order the rangs by the Battaglia were disinfected without specific orders as to that particular cargo.

Tenth. That the court did not hold that the rags upon the Battaglia were sent to Robbin's reef and there disinfected by the order of the collector of the port of New York and the order of the health officer of the port of New York.

Eleventh. That the court did not hold that the certificate given by the health officer of the port of New York was a direct order for the disinfection of the rags by the Battaglia.

Twelfth. That the sum of $3,182.50, for which the judgment was entered, contains two items for disinfection, namely:

Disinfecting 2,920 bales of rags by the Vigilant at $5 per ton	$2,920 00
Disinfecting 150 bales of rags by the Battaglia at $5 per ton	262 50
	$3,182 50

612 and that, as it appears that a deduction of $750 was made by E. B. Bartlett & Co. upon the above amount at the time of the payment of the bills upon the two vessels, the judgment is $750 greater than should have been allowed.

GOODRICH, DEADY & GOODRICH,
Attorneys for Def'ts Bartlett, Woodruff, & Nitchie,
59 Wall Street, New York.

Endorsed: Supreme Court of the U. S. William Lockwood and another against Edward B. Bartlett and others. Assignment of errors. Goodrich, Deady & Goodrich, defendants' attorneys, 59 Wall street, New York, Brown Bros.' building. Allowed. C. H. V. B., J. M. J. D.

$89.65.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, William J. McKenna, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original record and that the same is all the things pertaining to the judgment — William Lockwood *et al. vs.* Edward B. Bartlett *et al.* on file in my office, and that the same is a correct transcript therefrom and the whole of such original record.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 15th day of March, 1892.

[Seal Supreme Court of New York.]

WM. J. McKENNA, *Clerk.*

Endorsed on cover: Case No. 14,993. New York supreme court. Term No., 712. Edward B. Bartlett, Albert C. Woodruff, and Henry E. Nitchie, plaintiffs in error, *vs.* William Lockwood and Emory W. McClintock. Filed March 18th, 1892.